Dallah Al-Baraka Group
Al-Baraka Banking Group (ABG)
Department of Research & Development

Shariah Opinions (Fatwa)
On
Murabaha

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بسم الله الرحمن الرحيم

In the name of Allah, the merciful, the compassionate

Introduction

Praise be to Allah, the lord of the universe, peace and prayers be upon the righteous Imam our prophet and messenger Mohammad, peace and prayers be also upon his relatives and companions.

Al-Baraka Banking Group (ABG) is pleased to present this English version of the book entitled (**Shariah Opinions (Fatwa) on Murabaha**) to the Islamic banking and economics library**,** Islamic Financial Institutions, and students and researchers in different universities and research institutes. This effort comes within a context of a wider plan which aims to translate the huge knoweledge wealth produced by the group earlier as a result of sustained efforts in the field of development of Islamic financial and banking instruments, and in a bid to introduce Islamic economics and transactions to English speaking individuals and communities parallel with recent rapid expansion and development in the field of Islamic banking and in conformity with the general objective of land construction and development as well as dissemination of Islamic principles and values in economics & business domains.

This book is issued as part of the series of computerized Shariah opinions (Fatwa) program whereby the series had covered Shariah opinions (Fatwas) on Murabaha, Mudharaba and Musharaka e.t.c. where Fatwas from Shariah supervisory boards of different Islamic Financial institutions were compiled, sorted and indexed in a manner that makes their retrieval very easy to provide easy reference for researchers.

Providing this publication to all, Al-Baraka Banking Group would like to thank Dr.Ahmed Mohieddin Ahmed, Director of Research & Development department for compiling, sorting and indexing the book's material and Dr.Abdul Sattar Abughuddah for revising the same. Also thanks to those who contributed to preparation, and supervision of this issue.

Adnan A.Yousif

Chief Executive Officer

Albaraka Banking Group

(1)

General Rules and Principles of Murabaha

(1 - 1) General Provisions of Murabaha

Question (1):

What are the conditions of permissibility of different modes of Murabaha?

Answer:

The forum, which had been held during the period 8^{th}-11^{th}June, 1990, corresponding to 13 -16 Dul'qa'dah 1410H and based on in-depth study of Murabaha, has reached the following conclusions:

(1) Scholars have got a specific concept of Murabaha.

(2) The forum has discussed the different modes and types of Murabaha that are prevailing nowadays in the Islamic banks.

(3) Fiqh has a famous rule that the essential factor in contract is about the purposes and meanings and not words and phrases. However, the transactions which are common practices today in banks under the name of Murabaha contain only the reality of Murabaha and not its mere name.

4 - The modes of Murabaha which are prevailing today in the Islamic banks can only be accepted based on the following terms and conditions:

A- The bank clearly stipulates in its special form the nature of the goods which the bank sells as to their kind, origin and other description that must be mentioned in order not to leave in the contract any kind of vagueness and ambiguity which lead to dispute between the contractors. It must also state the amount of benefit granted to the bank out of the value of the contract and to determine the duration of maturity and amount of installments.

B - Contracts with prices that are different due to advance or deferred payment as well as due to different lengths of the periods of the contract are not valid. Yet, the bank has to submit a sample of goods and specify payment of the price within a specific time with certain installments and define the profit of the bank.

Source:

Significant Islamic Figh resolutions: Islamic Figh Academy in India, University of Enker-New Delhi, third juristic (Figh) Forum, Resolution (No. 2).

Question (2):

A Bahraini Islamic bank invited us to participate in a transaction of buying Iraqi oil and sell it to Turkish Refineries Authority in mode of Murabaha transaction.

The Turkish Refineries Authority will open a documentary credit in favor of the Islamic banks represented by this Islamic bank which will purchase the oil from the Iraqi exporter who will deliver it to the final buyer in Turkey.

Please specify whether we may participate in this transaction?

Answer:

I do not see any objection against this transaction within the context of legitimate Murabaha sale procedures that are applied in

the Islamic banks based on the permission bestowed by some old and contemporary scholars.

Source:

Fatwa of the Shari'ah board of Qatar Islamic Bank, Fatwa (No. 79).

Question (3):

Please provide the Shari'ah opinion on the following:

A bank client submitted its application to purchase a property in the amount of 250.000 pounds provided that the bank sells same property to the client in form of Murabaha in the amount of 265.000 pounds to be paid by the client after one month as of the date of the sale of the bank's property to the client. However, the client will mortgage same to the bank until he settles down the value of the property?

The answer

The application contains two facts: a promise to purchase and selling in Murabaha mode. This is the proper adaptability of the

application text, as the applicant promised to buy the property, in mode of Murabaha, from the bank and asked the bank to purchase the house from its current owner at value of 250.000 pounds provided that the Promising Buyer will pay an amount of 256.000 pounds, as the price of the property, after three months from the date of sale of the house to him.

Promise to purchase is no doubt permissible and subsequently binding the Promising Buyer towards the mentioned details, however, selling in Murabaha mode is permissible and the above mentioned profit offered by the promising buyer though it is little relative to the property value is also permissible, and no objection from Shari'ah point of view as well as the Shariah board based the permissibility of the promise to purchase on opinions of jurists, which are summarized as follows:

First: Promise is not binding.

Second: Promise, in view of Maliki Jurists, would be binding, if the promising reason has been specified.

Third: Promising, based on the view of Maliki Jurists and Bin Shbrimah, is absolutely binding.

Fourth: Representatives of the Islamic banks discussed the subject of promise to purchase and authorized Shariah boards of banks to choose between binding or non-binding Promise.

The board accepts in its current Fatwa, and future Fatwa's binding the promising buyer to purchase after the arrival of the commodity and awarded him the right of option provided that he has to pay all expenses incurred due to his promise or all costs that the bank would not have incurred if not being promised.

Accordingly it is permissible for the bank to buy the house at an amount of 25.000 pounds based on a promise from Mr. Ali Mohamed Al-Hassan AbdulSalam to buy same from the bank at a profit of 17.000 pounds and settle the amount after a maximum period of three months from the date of sale.

This transaction is permissible with the following notes:

(1) We have approved the form of promise to purchase, which contains clauses that stipulate the approval of the Promising buyer to pay a certain percentage of the value as collateral to prove his seriousness in execution of the commitment. However, albeit Istisna contract is permissible in Islamic law, yet we draw the attention to paragraph 6 of the form, in which the bank is not allowed to agree with the owner of the land to offer it profit of 25% of the costs because this is a sort of ambiguity in the conditions of the purchase of the house by the bank and commitment of the Promising Buyer to buy. Nevertheless the sixth paragraph imposes a penalty clause on the buyer to pay an amount of five thousand pounds for each month after the end of the above mentioned due date. This requirement is not allowed in such an agreement because it is an increase to the amount which binds buyer and this increase is of the same kind of the debt and increases in accordance with the length of delay period in which the client has not settled the required amount, hence such increment fall within the prohibited usury. So we do not

agree about the existence of paragraph (6) that contains this clause in the agreement. We prefer to replace the paragraph with a text in which the bank is entitled to sell the house to anyone who wishes to buy it provided that the promising buyer has to bear any differences, expenses or decrease in value caused by his promise to purchase, according to which the bank entered into the given transaction.

Source:

Fatwas of the Shari'ah board of Sudan Islamic Bank, Fatwa no. (28).

Question (4):

With respect to permissibility of Murabaha sales, are the transactions described below permissible from a Shariah point of view?

First: An owner of a piece of land asked the bank to finance a building on it. The bank agreed with him to construct the

building on the land provided that the bank gets a profit of 25%.

Second: The owner of a piece of land asked the bank to finance a building on the piece of land. The bank agreed with him to construct the building provided that it gets a profit of 50% since the value will be paid through installments within a period of five years?

Answer:

This transaction did not fall within the mode of Murabaha sale in which the buyer has to sell the commodity in its principal value provided that the second buyer put specified additional profit. It is a condition in Murabaha sale that the first buyer clearly specifies the cost and the required profit. In the transaction inquired about, the bank has not purchased anything to sell it in mode of Murabaha, but wants to agree with the owner of the land to build its land. However, such treatment falls within the field of Istisna' Contract, If the bank is taking charge of building the house up to delivering it to the owner of the land in accordance with the agreed

upon specifications. Istisna' Contract is permissible in Shariah, but the bank is not allowed to agree with the owner of the land to get a profit of 25% of the costs, as this dealing involves ignorance of price. So, the permissible method is that the bank estimates the cost and adds its profit to it then agrees with the owner of the land to build the house for a particular amount – the cost plus the profit – to be paid on delivery, or pay part of it in advance and the rest on delivery or settle it down in installments to be agreed upon. Nevertheless, there is no objection to increase the price if the payment would be in installments and there is no objection also to differ the price in accordance with the term of payment.

Source:

Fatwas of Shariah board of Faisal Islamic bank - Sudan, Faisal Islamic bank publications, Fatwa (No. 19).

(1 - 2) Steps and Procedures of Murabaha Contract

Question (1):

Please provide me with the Shari'ah opinion about the following:

The transactions, which are presented to the bank from some clients requesting the bank to participate with the client in purchasing a local type of goods and then enter into contract to sell these goods to the partner client who participates with the bank for a price consistent with the market prices that achieves appropriate mutual dividend profit acceptable to the bank and the client and the clients would repay the value of sale including profits in cheques delivered at terms spread over several months?

Answer:

The bank can do alone the first purchase process (locally: or imports them from abroad) and then directly sell the goods thereafter to the client as a deferred sale on an agreed upon price provided that no party should exploit the other party. Of course, the disposition of these cases by the bank and the act of purchase

unilaterally, is based on the confidence in the client and his reputation as well as the validity of his previous transactions with the bank. However, the transaction can be carried out according to Murabaha in which the client authorizes the bank to carry out the purchase of a commodity with particular specifications provided that the client purchases the same commodity in same initial purchase price plus a certain percentage of profit to be agreed upon. in all these cases it is imperative that the whole transaction should be free of any exploitation and grievance of any party to the other and that any of these transactions has to be restricted to the bank's clients who are trustful and reliable for the transactions to be conducted smoothly, and avoids problems raised by any client who intends to fiddle around with the bank's rights.

Source:

Fatwas of Shari'ah board, Faisal Islamic Bank, Egypt, Fatwa No. (16).

Question (2):

What is the Shariah opinion on the following?

Under Murabaha mode of sale which is approved by the Islamic Shari'ah, can Faisal Islamic Bank import machineries and equipment as well as any other fixed assets necessary for investment projects and sells them in Murabaha credit based on a specific percentage of profit to be agreed upon by both parties and added to the total cost that includes the purchase price, customs duties and various expenditures to reach the final sale price, however, the parties have to agree on the location and conditions of delivery of sold commodity and the method of payment over different terms, which might range between a year to five years according to what is stated in the memos regarding Murabha sale?.

Answer:

The board has already explained in its previous meetings that sales and purchase, within the provisions of Shari'ah, are legal methods of investment and that Murabaha sales, under the previously outlined conditions are Shari'ah compatible.

Source:

Fatwas of Shari'ah board, Faisal Islamic Bank, Egypt, Fatwa No. (16).

Question (3):

Please provide Shariah opinion in case it is stipulated that assets which are the subject matter of Murabaha transaction should be made known and identified?

Answer:

According to Shariah principles and in case of Murabaha sale the original price of the good and all costs incurred by the original buyer to obtain good should be clear and known to the buyer in Murabaha transaction and therefore scholars define the sale of Murabaha as the sale of commodity with its current costs plus an agreed upon profit. Hence we believe that all Murabaha sale information should be clarified in all sale documents placed in the file of each contract.

Source:

Fatwas of Shari'ah board, Faisal Islamic Bank, Egypt, Fatwa No. (16).

Question (4):

Please provide the Shariah opinion on the dealings of the company in Murabaha transactions of international goods as summarized hereunder:

First: A client applies to Al-Rajhi Investment Banking company requesting it to purchase a specific type of goods with known specifications in accordance with international announced price of these goods, then the company sells same to the client (purchase orderer) to pay its value on a deferred specific date.

Second: Al-Rajhi Company carries out the purchase of such goods from an investment bank that deals with transactions of purchase and sale of these goods and pays it the specified value. Then the Investment bank registers the goods under

the name of Al-Rajhi Company and informs it about this action through a telex message.

Third: Al-Rajhi Company then sells such goods to the client (the purchase applicant) and asks the investment bank to transfer ownership of the goods to him from the ownership of the client (the purchase orderer).

Fourth: Thereafter the client (purchase applicant) pays the value of the goods to Al-Rajhi Company in a deferred date.

Answer:

The board has no objection for the company to invest its money through such transaction, provided that such goods should already be in the stores of the investment bank and registered under the name of Al-Rajhi Company and the bank provides the company with a certificate from its warehouse that demonstrates the presence of the goods in its warehouses and under the ownership of Al-Rajhi on the date of the transaction. Yet the dealing of the company in this transaction should be temporary until it completes

the investment of its funds through transactions and contracts that are closer to Shariah compliance and safety.

Source:

Collection of Fatwas of Shari'ah board, Al-Rajhi Banking & Investment Company, Resolution No. (30).

Question (5):

Please state the Shariah opinion on Murabaha sales in the foreign trade which take place in the following forms:

First: The client makes a request, to purchase certain goods from an exporter outside Kuwait, that is conditional upon the approval of the goods.

Second: Kuwait Finance House opens a documentary credit under its name that includes the following conditions: The process of selling between Kuwait Finance House and the exporter is carried out on the date of receipt of the commodity by the Kuwait Finance House and approval of

the client to such goods in Kuwait, considering that the exporter agrees to these conditions.

Third: the exporter undertakes the shipment of such goods in the name of Kuwait Finance House and sends shipping documents to the Kuwait Finance House.

Fourth: when Kuwait Finance House receives the documents it informs and delivers them to the client against an interim promissory note, to secure the rights of Kuwait Finance House.

Fifth: The client inspects and receives the goods in the name of the Kuwait Finance House, then informs Kuwait Finance House if he is satisfied and accepted the goods.

Sixth: Kuwait Finance House pays the value of the goods to the exporter upon receiving the consent of the client.

Seventh: The client and Kuwait Finance House then conclude a sale contract while the client signs a promissory note (s)

with the value of the goods plus any expenses incurred and the agreed upon profit.

Eighth: Kuwait Finance House deducts the value of the promissory note (s) from the account of the client on its due date.

Answer:

That is the essence of such transaction which is considered correct.

Source:

Kuwait Finance House, Book of Fatwas in economic issues, parts (1), (2), Fatwa (No. 24).

Question (6):

In execution of Murabaha credits a documentary credit will be opened from the Kuwait Finance House for the benefit of the exporter. However, the opening of the credit is considered as a binding offer issued by the Kuwait Finance House that offset by the positive acceptance of the exporter through the shipment of goods in the name of Kuwait Finance House and then the goods

become owned by Kuwait finance House which can dispose of by sale to the purchase orderer or others; hence the question is:

After opening the credit and delivering it to the exporter and prior to shipment of the goods and payment of its value the exporter sometimes replies in writing to Kuwait Finance House regarding its offer, i.e. the opening of the credit, and states its approval on the implementation of the credit and acceptance of its terms.

Is this approval considered as acceptance and thus the sale is considered executed, and if so is it permissible for the Kuwait Finance House to dispose off the goods and sells them to purchase promisor and sends the goods under its name (I.e. directly under the name of the purchase orderer) or deliver the goods to it?

Answer:

We see that Kuwait Finance House should not enter into transactions that do not show that it is playing a key role which limits its role to proxy to purchase and sale so as to avoid pretexts leading it to limit its role in provision of finance only.

The answer to the questions raised is:

First: The fact that the exporter responded in writing to the Kuwait Finance House offer is considered an explicit acceptance and at conjunction of offer and acceptance, sale is executed.

Secondly: Kuwait Finance House is not allowed to sell the purchased goods to the purchase promissor or others except after collection from him or his agent.

Third: The goods should not be sent or delivered to Purchase pormissor unless a contract be made between him (Purchase promissor) and Kuwait Finance House.

Source:

Book of Fatwas in economic issues, Kuwait Finance House, parts (1), and (2), Fatwa (No. 24).

Question (7):

As for goods imported based on Murabaha sales (FOB and S&F) is it necessary for Kuwait Finance House to pay freight charges to be paid after the receipt of the goods and conclusion of sales contract?

Answer:

In case of Murabaha sale the agreement should either be based on a purchase price, hence no any other expenses may be added, or on price plus the cost specified in the contract then the agreed upon percentage of profit may be added. However, after the agreement if any expenses existed then only such new expenses, after being referred to in the contract can be added without adding any further profit.

Source:

Book of Fatwas in economic issues, Kuwait Finance House, part (1), and (2), Fatwa (No. 128).

Question (8):

Credit department delivers to the representative of the client all documents needed to clear and receive the goods that were imported under Murabaha credit. However, as the client is traveling abroad, then his representative, and after a period of time, can sign the contract of sale. The reason for handing over the goods to the representative of the buyer, before signing a contract of sale, is because the buyer is abroad as well as the fear of the goods not to be damaged after being arrived to Kuwait?

Answer:

It is permissible just to hand over the documents to the representative of the client to complete the transaction, provided that a prior written consent of the client should be issued to stipulate that the receipt of document by his representative is considered as approval and acceptance of the contract.

Source:

Book of Fatwas in economic issues, Kuwait Finance House, part (1), and (2), Fatwa (No. 257).

Question (9):

A form submitted by the department of documentary credits regarding granting some body the power of attorney to purchase and ship goods in the name of Kuwait Finance House, and the client promised to purchase same after being shipped under the name of the bank.

The form is:

Messrs/ Kuwait Finance House,

Assalamu Alaikum Wa Rahmatullah Wa Barakatuh

Please note that we have received an offer from Messrs (): to export the following goods to Kuwait: According to preliminary invoice number () dated () and the prices listed, Kuwait delivery to be insured by (). Note that the shipping date will be approximately

() directly to and from Kuwait and without shifting from a vessel to another, on the ship (), on the plane (), the truck (). Accordingly, please give us your approval to represent you in the selection of the goods in question after verification of goods specifications, quality, validity, prices, and ship the cargo to you. We also agree to purchase same goods in mode of Murabaha after being shipped to you if you agree that the margin of profit will be (%) of the cost of the goods. We hereby guarantee the good performance and duly shipment of such goods in your name by the mentioned exporter, and the shipping documents will be sent to you with collection charges.

With best regards,,, Name, Account number (), Telephone number()

Answer:

The above mentioned form is approved and upon the reception of documents they will be considered as acceptance to the sale based on the offer issued by Kuwait Finance House through its agent.

Source:

Book of Fatwas in economic issues, Kuwait Finance House, Part (1), and (2), Fatwa (No. 442).

Question (10):

Please provide us with shariah opinion in case the bank purchases cars from an official agent and then sells them to the clients under Murabaha according to the following guidelines:

First: The vendor provides the bank with an invoice of price offer in order to obtain the approval of the bank to carry out Murabaha sale at the request of the client buyer.

Second: The bank branch approves the invoice after verifying that it is in conformity with the set forth requirements and conditions and returns it to the seller.

Third: The seller arranges the sale contracts and promissory notes and receipt of the first installment (25% of the car value) and directly waives them to the buyer as well as to

mortgage them to the bank at the traffic department for the benefit of the bank.

Fourth: The seller submits the documents to the bank which in turn pays the value of the invoice of the sold item and receives the promissory notes after completion of the procedures necessary to conclude the second sale contract.

Fifth: The vendor guarantees the submitted promissory notes and the bank is entitled to obtain other collateral as it deems necessary to ensure its rights.

Sixth: The car has to be comprehensively insured for the benefit of the bank.

Seventh:The maximum repayment period is thirty months and the percentage of Murabaha is (16%) for the period that exceeds twenty-four months. However, the percentage of the valid Murabaha will be applied in its maximum value for the duration of twenty-four months or the period less than this.

Answer:

First: The second article of the Code of Jordan Islamic Bank for Finance and Investment stipulated that the sale to purchase promissor in Murabaha, implies that the bank executes the request for purchase, after contracting, and this requires that the bank shall not purchase, or obliges to pay the price, or actually pays the price prior to contracting with the other party which include commitment of the purchase promissor in accordance with the agreement.

Second: What appears from your letter is that the bank considers that the client buyer request is enough while it is not enough.

Third: Before embarking on the procurement process by the bank the other party, who desires to purchase, should be aware of the price and the resulting effects. This is complementary to the cost, because all Figh texts unanimously agreed that all contracting parties should be equally informed as regarding price and cost, so that it will not be a source of conflict between them.

Therefore, I believe that, Shariah principles require that for Murabaha sale to be valid and complete its requirements, a contract shall be executed with the purchase orderer before the bank enters into any financial responsibility or obligation and before taking other activities. The procedures and actions to safeguard the rights of the bank and its interests should be taken.

Source:

Fatwas of Jordan Islamic Bank for Finance and Investment, Book of Shariah Fatwas, Parts (1), (2), Fatwa (No. 14).

Question (11):

Please provide Shariah opinion in the case the bank purchases a household furnishings and any other equipment (such as bedrooms, refrigerators, washing machines, gas stoves. etc.) from accredited dealers and sells them to clients in Murabaha mode along the following lines:

First: The vendor provides the bank with an invoice stating the prices in order to obtain the approval of the bank to carry

out the sale on Murabaha basis at the request of the client buyer.

Second: The bank approves the invoice after verifying that it is in conformity with the set forth requirements and conditions and returns it to the vendor.

Thirdly: The buyer pays the vendor a percentage of (15%) to (25%) of the value of sold item.

Fourth: The vendor arranges the promissory notes for the buyer and guarantees them when being submitted to the branch.

Fifth: The vendor submits the mentioned documents to the bank which in turn pays the sale invoice balances.

Sixth: The maximum period for payment is eighteen months.

Seventh: The percentage of the valid Murabaha (in effect) will be applied in its maximum value according to the payment period.

Answer:

According to your letter it seems that the bank purchases household furnishings or any other fittings which it agrees to their price prior to the arrangement and signing of a contract between the bank and the purchase promissor; although in the case of Murabaha the purchase promissor first requests to buy the currently existing goods, or goods with accurately described specifications; and after the bank's verification of the price and cost, a contract shall be arranged with the purchase promissor embodying the commitment of the latter to purchase the items which it ordered the bank to purchase … etc. If the bank complies with these procedures then it is permissible to continue in the Murabaha transaction. Otherwise Shariah requires that, first a contract be made and entered into between the bank and the purchase promissory that stipulates his commitment to buy what he requested the bank to purchase under his name. This should be carried out before any financial obligation and responsibility be made by the bank in observance of the interest of the bank.

As mentioned in item (c) of your letter regarding the buyer initiative to pay the percentage, contained in the paragraph of the price, to the seller, who is the approved trader. If this is part of what the contract between you and the client included, or it will be executed under an authorization by you, then it is Shariah permissible.

Source:

Jordan Islamic Bank for Finance and Investment, Book of Fatwas, Parts (1), (2), Fatwa (No. 15).

Question (12):

What are the basic points to be followed in commercial Murabaha transactions by procurement from the local or foreign market?

Answer:

The board affirmed the need to adhere to the recommendations of the Second Conference of the Islamic Bank, held in Kuwait on Jumada Akhar 6th – 8th, 1403 H corresponding to March 21st -23rd,

1983G based on the following Shariah guidelines of Murabaha transactions:

First: The promise to sell on Murabha transaction to purchase orderer after the bank has purchased and possessed the commodity then sold it to the purchase orderer for an agreed upon profit, provided that the Islamic bank is responsible for the loss and damage before delivery and the subsequent rejection in case of unseen defects. However, the board in this stage, as the bank has no yards for loading, offloading and storage, gave the bank permission to deliver the sold goods to the purchase orderer at the show room or the place from which the bank purchased the commodity until the bank gets its own suitable storage areas in the future.

Second: The bank has the right for a down payment in the Murabaha transactions or other dealings provided that the bank is not entitled to deduct any amount from such down payment other than the value of actual damage incurred by

the bank as a result of the client's break of promise to purchase.

Third: The responsibility of the bank, regarding the importation from abroad in connection with “the Purchase orderer”, will end as soon as the client receives the documents, the goods arrives to the port and the sales contract is concluded between the bank and the client.

Fourth: The board opined that the bank undertakes to import the goods and bears all expenses, commissions, insurance and commodity risk related to import operations and the consequences of rejection for unseen defect. However, due to the practical difficulties in dealing with importation in the global market in the name of the bank alone where the bank faces:

- The presence of inclusive agents of the commodities,
- The objections of suppliers.
- The objections of clients.

The board approved the opening of credit under the name of the bank coupled with the name of the Purchase orderer, for two reasons:

1-Maintains the stability of commercial relations between clients and suppliers abroad.

2 - That this procedure will not affect the essence of the Murabaha in terms of the bank's responsibility and the bearing of all costs, burdens and risks related to the importation and consequences of rejection due to unseen defects.

Fifth: The bank may receive from the client different quotations for the commodity to be purchased and must try to obtain the best offers for the same goods for the benefit of the clients.

If the bank failed to do so then it may purchase from the exporter which is specified by the client, while observing the previously stated Shariah guidelines and principles of Murabaha.

Source:

Fatwas of Shari'ah board of Qatar Islamic Bank, Fatwa (No. 8).

Question (13):

Is it permissible to defer payment for goods of Murabaha to the supplier up to the end of the week or month, in purpose of:

Firstly: make sure there are no unseen defects after receipt of the goods.

Secondly: to ascertain the seriousness of the process and its reality.

Answer:

No objection to do so in the case of acceptance of the supplier to the agreed upon deferred repayment period.

Source:

Fatwas of the Shari'ah Board of Qatar Islamic Bank, Fatwa (No. 23)

Question (14):

In local Murabaha transactions the bank purchases the goods from a variety of sources from the local market and sometimes delivers the goods in parts to the client. Hence in such case is there any need to prepare a separate purchase order, a promise to purchase and a Murabaha contract for each part of the goods handed over to the client?

Answer:

The board has acknowledged that as long as Murabaha transaction is carried out as one transaction and delivery will be in parts then a purchase order, a promise to purchase and a Murabaha contract are to be made provided that all goods should be delivered in whole to the client in a relatively short period.

Source:

Fatwas of the Shari'ah board of Qatar Islamic Bank, Fatwa (No. 25).

Question (15):

In case of foreign Murabaha transactions and importing of goods from abroad through the opening of a fragmented documentary credit, i.e. the arrival of goods in phases, is there any need to prepare one separate purchase order, one promise to purchase and one Murabaha contract for the whole transaction or all these documents are to be issued for each arrived batch of goods?

Answer:

The board in this case approved issuance of one purchase order and one promise to purchase document for the transaction, however an independent Murabaha contract shall be concluded for each arrived batch of goods.

Source:

Fatwas of Shari'ah board of Qatar Islamic Bank, Fatwa (No. 26).

Question (16):

A question about the procedures followed by the bank in the event of the arrival of the goods prior to the arrival of the documents?

Answer:

The board has approved the procedures currently followed in such cases i.e Deliver the goods to the client until the arrival of the documents and calculates the value in a Murabaha contract in accordance with the currency exchange rate at the date of deduction of the goods value against us by the correspondent bank.

Source:

Fatwas of the Shari'ah board of Qatar Islamic Bank, Fatwa (No. 27).

Question (17):

Is it permissible for the bank to open a documentary credit under a Murabaha transaction according to a price quotation issued under the name of the Purchase orderer?

Answer:

The board opines that it shall be better, whenever possible, for the quotation to be under the name of the bank, but it is not a condition for the completion of Murabaha.

Source:

Fatwas of the Shari'ah board of Qatar Islamic Bank, Fatwa No. (35).

Question (18):

Some documents which are to be collected under the name of the bank arrived to a client who has not signed the documents of the order and promise to purchase; would it be considered Murabaha or not?

If not, what are the required procedures so as to consider it a Shariah acceptable Murabaha transaction?

Answer:

It is not permissible to consider goods whose documents, at the request of the client, have been sent to the bank for collection as a Murabaha transaction unless imposed Murabaha steps be completed prior to the shipment of the goods and sending of documents. However, in this inquiry, the client did neither sign a promise to purchase or purchase order, nor has the bank any objection on the procurement process from its onset.

Source:

Fatwas of the Shari'ah board of Qatar Islamic Bank, Fatwa (No. 42).

Question (19):

Is it permissible to complete the implementation of the promise to purchase and complete the sale of Murabaha for goods imported from abroad pursuant to a documentary credit, which did not show the name of the Islamic Bank as a buyer while the bill of lading is in the name of the bank?

Answer:

We are of the opinion that, in order to avoid recurrence of such cases the documentary credit should essentially be opened in the name of the bank and should not show the name of the client. However, in this case the board has approved submission of other invoices in the name of the bank, even if the invoices have been received by the telex then this telex invoice should cancel the previous first invoice.

Source:

Fatwas of the Shari'ah board of Qatar Islamic Bank, Fatwa No. (46).

Question (20):

Is it permissible in Murabaha transaction which is based on documentary credit to connect between dates and timing of payment of the installments and the date of deduction by the correspondent bank?

Answer:

The board opines that it is not permissible to make any collection of installments before the arrival and delivery of the goods to the client.

Source:

Fatwas of the Shari'ah Board of Qatar Islamic Bank, FatwaNo. (54).

Question (21):

Is it permissible to execute the Murabaha transaction if the goods arrived prior to the arrival of the documents and the bank was forced to allow the client to clear the goods through the issuance of customs clearance permit and hence received the documents with a violation i.e invoices are issued in the name of the client, also is it permissible to execute the Murabaha transaction in case the documents arrived before or at the arrival of the goods, while the invoices are issued in the name of the client?

Answer:

The board opined that the receipt of invoices in the name of the bank is one of the main pillars of the process of Murabaha as these invoices are the basic and only documents that prove the ownership and possession of the goods by the bank, hence it has been decided that, for the second case concerning the arrival of the documents before or at the goods arrival, while the invoices have been issued in the name of the client, the documents should be rejected and the goods shall not be delivered to the client unless the bank gets new invoices issued in the name of the bank either by mail or by telex.

As for the first case i.e. The arrival of the goods prior to the arrival of the documents and the bank being forced to allow the client to clear the goods by the issuance of authorized customs clearance permit and the reception of documents with a violation i.e. issue of the invoices in the name of the client, in order to issue the clearance permit for the client to release the goods, the board set forth the following conditions:

First: Ensure that the documentary credit did not include the name of the client.

Second: Take into consideration as far as possible that the invoices are not issued in the name of the client from the same beneficiary.

Third: It should be mentioned in the documentary credit that it is necessary for the bank to be notified by the beneficiary with the details of the consignment and the invoice confirming the issuance of the invoice in the name of the bank.

Fourth: If the beneficiary did not notify the bank and the client requested the issuance of the release permit, a telex shall be sent to the beneficiary requesting him to provide the bank with the details of the invoice as regarding its amount and its issuance in the name of the bank. However, the release permit should not be issued unless the beneficiary confirms that the invoice has been issued in the name of the bank, except if the non-issuance of such permit will surely cause damage.

Notice: The general manager had commented that there are some cases which can not be delayed and the client can not wait until the correspondent bank replies the telex of the bank, particularly if the client submitted his application on Wednesday or Thursday as Friday is a holiday for us while Saturday and Sunday are holidays abroad, which in turn delays the delivery of the goods to the client.

The board opined that in principle, invoice shall be issued in the name of the bank; but, if they have been issued in the name of the client, then it is considered an exceptional case that can not be taken as a reference.

Source:

Fatwas of the Shari'ah board of Qatar Islamic Bank, Fatwa No. (58).

Question (22):

Is it permissible for the bank to make a prior specification of the profit rate and earnest money (Urbun), as well as the conditions,

period of payment and grace period for the unseen defect upon defining the ceiling for the client (which must not be exceeded in Murabaha transaction) without taking into consideration the nature of the commodity which is the subject matter of the contract and the velocity of its circulation for each Murabaha transaction?

Answer:

The board sees that it is permissible besides the possibility of adding any other conditions at the time.

Source:

Fatwas of the Shari'ah board of Qatar Islamic Bank, Fatwa No. (63).

Question (23):

In accordance with the minutes of its meeting No(8), the board has stipulated that it is a condition that foreign investment transactions shall be based on actual dealings of purchase and selling besides the delivery of shipping and storage documents. However, there should be a period of time separating between purchase and selling processes.

What is meant by this separating period of time? Is it in hours, days? Please specify?

Considering that delivery is made according to storage documents, which are considered documents for the bearer i.e. the person who hold these documents is considered the owner of the commodity?

Answer:

The separating period of time between the action of purchase and selling might be a matter of hours.

Source:

Fatwas of the Shari'ah board of Qatar Islamic Bank, Fatwa No. (66).

Question (24):

The bank issues shipping guarantess and clearance permits (clearance of goods under Murabaha transactions) in a manner which implies that the client has opened the credit in his name at the bank, while the credit is actually opened in the name of the

bank and the bank justified this so as to enable the client receives the goods by himself.

Does this contradict or violate Shariah controls of Murabaha sale transaction?

Answer:

It is not permissible for the client to open the credit in Murabaha sale but the bank shall open the credit in its name and the goods should arrive in the name of the bank which in turn endorses all relevant documents after concluding the sale contract.

In case the documents did not arrive, it is permissible to issue a clearance permit in the name of the client after concluding the sale contract. Hence, if such conditions were fulfilled, there is no any objection

Source:

Fatwas of the Shari'ah board of Qatar Islamic Bank, Fatwa No. (70).

Question (25):

Is it permissible to include both Purchase order and Promise to Purchase documents in one form so that conditions of purchase order are included in one page and the conditions of promise to purchase on the other page in accordance with the attached proposed form in a bid to simplify procedures, reducing forms and save expenses?

Answer:

It is permissible in view of simplifying the procedures and redcing the number of forms.

Source:

Fatwas of the Shari'ah board of Qatar Islamic Bank, Fatwa No. (76).

Question (26):

What are the required controls and procedures that show the main role of the bank in Murabaha transaction?

Answer:

First: In application of Murabaha sales to a customer ordering purchase, the banks shall abide by controls which reflect the role of the bank in the transaction and avoids putting all its burden on the purchase orderer, such controls include:

(1) The bank undertakes to purchase the commodity by itself, or

(2) Through an authorized agent other than the purchase orderer..

(3) The bank has to pay directly to the seller without mediation of the purchase orderer.

(4) The bank should receive the commodity under its guarantee.

(5) The documents that prove the purchase and receiving of the commodity by the bank must be attached.

Second: To observe such controls, it is essential to pay much attention and care to those who undertake and apply Murabaha transactions. Therefore the Committee confirms the second recommendation of the resolution No (80/7/D8) issued by Jeddah Islamic Figh Academy, which reads: "Islamic banks should qualify their officials and employees and provide them with experts well acquainted with the nature of Islamic banking as well as provide them with the suitable training programme in cooperation with the (Islamic Institute of Research and Training) and all other bodies in connection with Islamic banking training".

Source:

Dallah Al-Barakah Group, Development and research Department, Resolutions & Recommendations of Al-Baraka Symposia on Islamic Economy, (Third Symposium), fatwa No. (8).

(1 - 3) Suspicions raised on Murabaha contract:

Question (1):

Some people reported suspicions about the permissibility of credit Murabaha sale on the pretext that it involves a usurious practice. As they also cited suspicions about the permissibility of Murabaha sale to the purchase orderer, such suspicions are:

First: This contract includes the selling of an item which is not possessed by the seller.

Second: Postponement of both exchanged items.

Third: It is the sale of money (Dirham) against money (Dirham) while the sold item is differed or it is a kind of Tawaroq Transaction.

Fourth: The Maliki Jurists prohibited binding the Promising Buyer in sale transactions.

Fifth: This contract contains impermissible fabrication.

Answer:

Sale of Murabaha which is known in Islamic Figh is permissible and agreed upon unanimously, whether it is in cash or in credit and this usurious suspicion raised on Murabaha sale in credit is not true whether for this kind of sale or in deferred sale.

As for the mode of Murabaha to the Purchase orderer, the Committee affirmed the recommendation of the second forum of the Islamic bank, held in Kuwait, including the reservations stated therein as regarding the matter of being binding. It reads as follows:

"The conference decided that promising in Murabaha sale to the Purchase orderer after possession if any of the purchased commodity by the bank to the Purchase orderer at the profit rate mentioned in the previous promise is permissible as long as the Islamic bank bears and held responsible for the damages incurred before delivery besides the responsibility of rejection if any".

As for the promise binding to the Purchase orderer or the bank or both of them, the consideration of mandatory and binding nature is

better for the interest and stability of dealings and transactions, as well as it takes into account the interests of the bank and the client. The acceptance of recognition of the binding & obligatory nature is Shariah permissible, and each bank is free to apply what its Shari'ah board sees regarding the question of binding. However as for the suspicions raised against the sale of the Murabaha to Purchase orderer we reply as follows:

First: This contract does not involve the sale of un-possessed items by the seller, because the contract of sale entered into with the buyer is only concluded after the actual possession and ownership, as well as suspicion of prohibition to sell what is not possessed by the seller is not agreed on.

Second: Suspicion concerning the deferment of the two exchanged items is rejected because ownership of the goods (which is one of the two exchanged items) is fulfilled in terms of on-the-spot price or deferred price.

Third: The usurious exchange in case of the loan takes place by exchanging an item for a similar item, for example the usurer gives the debtor hundred Riyals in credit and then recovers them as hundred and ten Riyal while in the case of sale such as in the case of deferred (credit) Murabaha, the exchange takes place for two different things i.e. The sold commodity and the price (money). Hence how it comes to compare and measure the dealing in Murabaha with Riba process, particularly, that despite the fixing of profit in Murabaha, this determination of profit implies either to miss the profit for the benefit of the Purchase orderer when the market price soars or incur loss upon the occurrence of the contrary. Nevertheless, this effect is a result of the supply and demand of the goods, rather than of the supply and demand of money.

Fourth: The prohibition (as condition for promise to sale) in view of Maliki jurists is based on two conditions which do not exist in this case; which are:

1-If the source from whom the commodity is requested is a party who deals in Aynah.

2- If the commodity orderer has requested it to benefit from its price and not its asset (Ayn).

Source:

Dallah AlBaraka Group, Resolutions & Recommendations of Al-Baraka Symposia on the Islamic Economy, Al-Barakah First Symposium, fatwa (No. 8).

Question (2):

Kuwaiti Finance House had ordered goods in its name from an exporter.

The exporter shipped the goods in the name of the client (purchase orderer) and not in the name of Kuwaiti Finance House. What action can be done? Do we accept the process or reject it?

Answer:

It is not permissible since goods must be in the name of the Kuwait Finance House, otherwise the whole transaction will become a mere financing transaction which is wrong?.

This error can be corrected by canceling all issued contracts or procedures entered between the client and the exporter.

Then a new transaction shall start between the exporter and the financier while taking the necessary precautions in the future to avoid such conduct.

Source:

Kuwait finance House, Book of Fatwas in economic issues, part 1 and 2, Fatwa No. (69).

Question (3):

To what extent does the bank accept the execution of new Murabaha transaction for a local client who previously filed a request for the implementation of local Murabaha transaction

where it was discovered that the goods which are the subject matter of Murabaha do not exist? Then he submitted other price quotation from another person?

Answer:

The board opines that this matter is related to the management and its keenness to deal with entrusted clients.

Source:

Fatwas of the Shari'ah Board of Qatar Islamic Bank, Fatwa No. (41).

Question (4):

What are the necessary controls and procedures to show the basic role of the bank in Murabaha operations?

Answer:

First: It is necessary that the bank, when applying Murabaha sales to a purchase orderer abides by the controls that mark the main role of the bank in the transaction and avoids putting

its entire burden on the purchase orderer. Such controls include:

1. The bank undertakes to purchase the commodity by itself, or
2. Through an agent other than the purchase orderer.
3. The bank has to pay directly the price to the seller without mediation of the purchase orderer.
4. The bank should receive the commodity to be, under its custody.
5. Attach the documents that prove that the bank has purchased and received the commodity.

Second: To observe such controls, attention and care should be paid to those who apply Murabaha transactions. Therefore the Committee confirmed the second recommendation of the resolution No (80/7/D8) issued by Jeddah Islamic Figh Academy, which reads: " Islamic banks should qualify their officials and employees and provide them with experts well

acquainted with the nature of Islamic banking as well as provide them with the suitable training programme in cooperation with the (Islamic Institute of Research and Training) and all other bodies in connection with Islamic banking training".

Source:

Dallah Al-Baraka Group, Development and research Department, Resolutions and Recommendations of Al-Baraka symposia on Islamic Economy, 9th symposia, fatwa No. (8).

(1 – 4) Timing of Murabaha Contract

Question:

Please provide us with Shariah opinion for the attached form "Appendix of Sale Contract for the Purchase orderer", particularly with respect to the following:

Is it permissible to set a period of time for the Murabaha sale contract made with the Purchase orderer (the client) whereby a ceiling is set for (provisions) through this ceiling (provisions) the client may conclude several transactions with the bank against sufficient guarantees. The proposed amendments are:

First: Article No. (): "The term of this contract is renewable as per the approval of the first party."

Second: Article No. (): "The first party has the right to amend all its applied transactions conditions (Murabaha ratios, commissions, the currency difference, mailing fees…etc.), without recourse to the Second party and / or the third Party,

It may only notify the Second and / or third party of any change made to those conditions?

Answer:

Regarding clarification on amendments made by the board of directors to the terms of Murabaha contract, concerning setting time for a Murabaha contract, it seems to me that this contract is a partnership on a trading matter in accordance with an agreement between the two parties. However, Jurists have differed over permissibility of determining a specific time for the contract of partnership or Mudharaba, for example five years. Some of them permit it while others prohibit it. Nevertheless, the permissibility of timing of partnership has been confirmed in Fatawa Al-Khaniyah as well as it has been mentioned in Maajam Al-Hanablah that it is permissible to set a time for Mudharabah while it is prohibited by others.

The Jordanian civil law is guided by views of jurists who permitted timing of both partnerships and Mudharabah; as reflected in articles (601), (631).

In view of the above mentioned facts I opine that timing of Murabaha contract is permissible as agreed by the two parties, if the bank's interest necessitates so.

Source:

Jordan Islamic Bank for Finance and Investment, Book of Fatwas, parts (1), (2), Fatwa No. (9).

(1-5) General Terms of Murabaha Transaction for the Purchase Orderer:

Resolution:

Having taken cognizance of the papers presented by members and experts in the subject of Murabaha Sale for purchase Orderer and after listening to discussions about the subject, it has been decided that:

First: Murabaha sale by Purchase Orderer is permissible on goods already in the physical possession of the seller, as required by Shariah, provided the seller carries the risk of loss before delivery or the consequences of returning the purchased goods because of unseen defects or any other reasons justifying the return of the goods after their reception, provided the conditions of the sale are met and with the absence of any impediments. Having noticed that the major part of the activities of many Islamic banks was geared to

financing operations of Murabaha on the purchase orders, it is recommended that:

1- The activities of the Islamic banks shall be extended to cover all the development mechanism of the economy particularly by sponsoring industrial and commercial projects, through individual initiatives or equity participation or Mudharabah with other partners.

2- The practical aspects of Murabha on purchase orderer to be studied by Islamic banks with the aim of working out the basis for safeguarding against any pitfall in the process of application and to help observing general Shariah rules as well as those governing operations of Murabha for orderer of purchase.

Source:

Organization of Islamic Conference (OIC), Resolutions and Recommendations of the Council of the Islamic Figh Academy, First, Second and Fifth Sessions, Resolution No. (23).

(1–6) Amending the Articles of Murabaha contracts

Question:

Provide Shariah opinion regarding the attached form "Appendix of a contract of sale for the orderer of Purchase ", especially with regard to the following issue:

Is it permissible for the bank to apply the attached form which states the bank's right to unilaterally apply any modifications or changes to the current terms and conditions of transaction, such as (Murabaha rating, commissions, differences in currency, mail fees … etc.), without recourse to the client (the other party to the contract), and informing the client only?

The proposed amendment:

First: Article No. (): "The term of this contract is renewable as per the approval of the first party."

Second: Article No. (): "The first party is entitled to amend all its conditions applicable thereto (Murabaha ratios, commissions, the currency difference, mailing

fees…etc.), without recourse to the second Party and / or the third Party, It only notifies the Second and / or third party of any changes to those conditions?

As for the clarification on the amendments made by the board of directors for the terms of Murabaha contract, which includes Murabaha ratio, commissions … etc as of 1/1/1981.

Regarding the Shariah opinion for the stated subject as per the attached form: This matter is in connection with the profit of the transaction and scholars unanimously agree on the necessity of defining and specifying the capital and the determination of the profit at contracting besides the seller and buyer should be equally informed to avoid conflict, as can be drawn from the Fiqh books such as: "Al-Moghani" (Ibn Godamah) and "Rad Al-Muhtar" and other great Figh books. Thus, if it is meant to change those rates in the future contracts and the purchase orderer agrees to them, then no objection for that, yet if it is intended, to amend the contracts that have been previously made as well as to change what had been willingly and mutually agreed upon then this is not permissible

because the contract has lost the element of mutual consent which is a condition for the validity of the contract.

Therefore I do not agree with the second article of the sent form.

Source:

Jordan Islamic Bank for Finance and Investment, Book of Fatwas, parts (1), an (2), Fatwa No. (9).

(1-7) Actions and agreements associated with a contract

Question (1):

If a client approaches Kuwait Finance House to deal with it on the basis of Murabaha, the Kuwait Finance House would buy commodities from a seller abroad. After having possessed those commodities, it would resell them to the said client. The client demands Kuwait Finance House to buy the foreign currency from it when the Kuwait Finance House pays the price of goods to the seller when the foreign exchange rate is suitable to the Kuwait Finance House compared to the market rates at that time.

Is it permissible for Kuwait Finance House to carry out such a transaction from Shari'ah perspective?

Answer:

If the goods sale contract is independent from the currency purchase agreement with the client, and both contracts are entirely independent, then, there would be no objection from Shari'ah point of view.

Source:

Kuwait Finance House, Book of Fatwas on economic Issues, parts (1), and (2), Fatwa No. (84).

Question (2):

In the event that the international Murabaha transaction is bound by Kuwaiti Dinar, the investment department would demand approval and acknowledgement letters from the agent and the buyer stating that the transaction shall be registered in the Dinar currency at the rate prevailing on the day of purchase from the exporter. In cases where the purchaser records are maintained in a currency other than the Dinar (e.g. Sterling), the purchaser would demand that the sale invoices be recorded in his own currency (Sterling) against the Kuwaiti Dinar . Is this permissible?

Answer:

It is permissible to conduct "Murabaha" transaction in Dollar and then convert the Dollar to Dinar at the exchange rate of the Dollar or others prevailing on the day of purchase from the exporter.

Source:

Kuwait Finance House, Book of Fatwas on Economic issues, parts (1), and (2), Fatwa No. (158).

(2)

Provisions of Foreign Exchange in International Murabaha

(2-1) Registration of Murabaha Transaction at the exchange Rate Prevailing On the Day of Purchase from the exporter.

Question (1)

In the event of restricting the international Murabaha transaction to be executed in Kuwaiti Dinar, the investment department would demand approval and acknowledgement letters from the agent and the buyer stating that the transaction shall be registered in Dinar at the rate prevailing on the day of purchase from the exporter. On other cases where the purchaser records are maintained in a currency other than the Dinar (e.g. Sterling), the purchaser would demand that the sale invoices be maintained in his own currency (Sterling) against the Kuwaiti Dinar . Is this permissible?

Answer :

From Shari'ah perspective, no objection to conduct Murabaha transaction in Dollar and then convert the Dollar to the Dinar at the exchange rate of the Dollar (and other currencies) prevailing on the day of purchase from the exporter.

Source:

Kuwait Finance House, Book of Fatwas in economic issues, part (1), and (2), Fatwa No. (158).

Question (2) :

On a given day I purchased Dollars at different rates, e.g. 300, 290 & 295. Under these circumstances, which of these rates shall I apply when dealing with a client ?

Answer :

It is essential to evaluate the currency in case of Murabaha sale on the day you purchase the goods because it is now your liability even if the actual payment is deferred to a later date.

With regard to identifying the price on that day, you should apply the rates used by the local banks in dealing in documentary credits with their clients. Your cost price of purchasing the currency for yourself is not a standard measure if it is at odds with the prevailing price.

Source:

Kuwait Finance House, Book of Fatwas in economic issues, part (1), and (2), Fatwa No. (160).

Question (3):

Should I consider the exchange rate prevailing on the day of goods purchase upon which Murabaha contract is concluded or the exchange rate on the day it has been sold to the client?

Answer :

Murabaha deals have to be effected based on the currency used for buying the goods upon which the Murabaha contract is concluded. The price has to be paid on the same currency or in Dinar which the purchaser attains by virtue of foreign exchange contract when settling the due price by the same currency.

Source:

Kuwait Finance House, Book of Fatwas in economic issues", part (1), and (2), Fatwa No. (172).

(2-2) Buying Currency from a Client during Payment to the exporter:

Question:

When a client approaches Kuwait Finance House hoping to deal with it on Murabaha, Kuwait Finance House buys Commodity from a seller abroad. After having possessed the goods, it would be resold to it . This client demands the Finance House to buy the foreign currency from it upon payment of the goods value by Kuwait Finance House to the seller. This occurs when the foreign currency rate is suitable to Kuwait Finance House relative to market rates at that time.

Is it permissible for Kuwait Finance House to exercise such practice?

Answer :

If the goods sale contract is independent from the currency purchase agreement with the client, and if both contracts are

entirely independent, then, there would be no objection from the Shari'ah point of view thereon.

Source:

Kuwait Finance House, Book of Fatwas in economic issues, part (1), and (2), Fatwa No. (84).

(3)

Selling Price for the Client

(Purchase Orderer)

(3-1) Inclusion of Bank Employees Costs

Question:

In case of selling goods based on Murabaha method: do we add on the goods cost all expenses spent on it including employees salaries involved in the goods importation (e.g. clerks, auditors, and customs clearing agents etc.)?

Answer:

The price of goods sold in Murabaha should only be increased by customary expenses goods which increase the goods value and are directly connected to it.

However, salaries of employees, clerks, and auditors should not be included thereon as they are part of the completion of purchase transaction which justifies earing the original profit. With regard to customs clearing agents, if they happen to be from outside Kuwait Finance House staff, then, whatsoever is paid to them shall be added to the price. But if they are part of the Finance House staff, then, only the portion paid for vehicle clearance should be added to

the price, while salaries of the clearing agenl staff shall not be added. Meanwhile, expenses that are not legally added to the price may be covered through the profit amount or its rate.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (330).

(3-2) Basis of charging Selling Price to the Client

Question (1):

What is the Shari'ah opinion on the method of calculating the selling price in Murabaha sales?

Answer:

The fundamental principle in Murabaha sale is strict observance of honesty. If a condition has been set to make an increase over original price, the purchaser (client) should be aware of the actual price that he bought with. Whereas, if it has been agreed to make an increase on the original price and expenses, the bank would be eligible to add the customary expenses in the marketplace on the prices such as storage and loading charges. It should not declare that is bought by such a price but should rather mention that it has cost the bank such an amount.

Source:

Kuwait Finance House, Book of " Fatwas on Economic Issues", part (1), and (2), Fatwa No. (1).

Question (2)

Please advice Shariah opinion on following transaction :

With regard to Murabaha credits, Kuwait Finance House calculates goods costs on the payment day and adds up a certain rate as a profit margin for the bank from sale transaction to the client. The longer the period of time is, the rate would escalate. The question is:

If the credit conditions stipulate an advance payment to the exporter wherein the goods would arrive about 3 months later and the remaining amount has to be paid upon goods arrival, would it be appropriate for the Finance House to consider this period of time while calculating the profit rate?

Illustrative example:

On buying goods by way of Murabaha for an amount of 100 Dinars,for instance, and the client asked payment to be effected a year later, profit calculation would be as follows:

100 Dinars * 10% = 10 Kuwaiti Dinars. In regard to the question case :

For instance the quarter would be paid in advance on 1-1-89. The 3 quarters on 1-4-89 upon goods arrival. Settlement would be effected a year later from date of 1-4-89 i.e. 1-4-90. The advance payment of 25 Dinars * 10% for a period of 15 months = 3,125 Kuwaiti Dinars. Payment upon goods arrival 75 Dinars * 10 % for one year = 7,500 Dinars. Total profit would be 10,625 Dinars. The percentage would be 10,625 % in stead of 10%. The apprent difference is due to calculating the profit for the period of 3 months for the advance payment. Is this method of calculation permissible or not?

Lastly, I wish to be allowed to attend the discussion of this enquiry in order to respond to any details that you may raise in this connection.

Answer:

It is essential to know the goods cost prior to entering into Murabaha. Also bargaing of profit within the framework of

Murabaha is allowed. It is however, a pre-requisite to know the cost and profit amount or rate at the time of contract signing.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (459).

(3-3) Customs Clearance Cost

Question:

In case of selling goods based on Murabaha method: do we add on the goods cost all expenses spent on it including employees salaries who were involved in the goods importation(e.g. clerks, auditors, customs clearing agents)?

Answer:

The customary expenses which increase the goods value and are directly connected to it, should be added to price of goods sold on Murabaha.

However, employees, clerks, and auditors salaries should not be included thereon as they are part of the purchase transaction completion which justifyies the profit. With regard to customs clearing agents, if they happen to be from outside the Kuwait Finance House staff, then, whatsoever is paid to them shall be added to the price. But if they are part of the Finance House staff, then, only the portion paid for vehicle clearance should be added to

the price. Salaries of the clearing agents shall not be added. Meanwhile, expenses that are not added to the price shall be covered through the profit amount or its rate.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (330).

(3-4) Offering Special Prices to Certain Categories of Clients

Question:

May we sell a given commodity, on Murabaha basis, to clients whose salaries are deposited with us at a special price which is different from selling prices given to ordinary clients?

Answer:

It is allowed to sell given commodities, on Murabaha basis, to clients whose salaries are remitted to the Kuwait Finance House at a rate different from prices applied on ordinary clients. This practice aims at encouraging them and others to deal with the Finance House and deter them from engaging in prohibited transactions. Provided that, it is essential to exercise honesty in offering the original prices and their associated cost.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (340).

(3-5) Adding Bonus Amount Payable to Distributors

Question:

Commercial deals activities within the local Murabaha management in the trade sector is offering services of electric appliances distributors. Such electric appliances are offered to the distributors in wholesale on Murabaha basis. We buy the equipment from the agent and sell them to the distributors. It is customary that the agent grants a bonus to the distributor at the end of the year depending on purchase volume. Is there any objection from the Shari'ah perspective in granting such a bonus to the distributor by the agent bearing in mind that we in fact who were the original buyers from the agent?

Is it also permissible from the Shari'ah view point to request the agent to grant us such bonus and preserve our option to either grant it to the distributor or keep it for ourselves?

Answer:

If it is a common practice in dealing with agents, that they pay bonus at the end of the year depending on purchase volume, or if it has been stipulated in the contract, then, it should be deducted from the principal amount in line with the Murabaha provisions. On the other hand if this is neither a common practice nor has it been conditional and the bonus was granted at random, then, the issue is considered as having no connection to the contract.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (423).

(3-6) Addition of Profit in Return for Advance Payment to the Exporter

Question:

A client has approached us and promised to buy some goods. Among the conditions of his wish was that we pay an advance upon opening the credit and prior to delivering the goods from the exporter. Are we allowed in such a case to increase the profit in a manner which would cover the period extending from time of paying the amount to the exporter and the contracting party with the purchase orderer?

Answer:

Identifying the profit in the contract is to be arranged by mutual agreement between the seller and the buyer. Internal considerations that have been observed in identifying the profit shall bear no effect. The seller is eligible to increase the profit whether in a lump sum or a percentage without term designation. Consideration shall be given to whether the profit amount has been promised and consequently the credit opening provisions have entailed advancing

payment of the amount to the exporter. Here, there is no effect on Murabaha because the capital has not been increased. But if there was no such a promise arrangement and it was a mere bargaining, both parties may adjust the profit rate within the range of the subject intention and promise to buy.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (445).

(3-7) Adding additional Cost Value in Murabaha Transactions that Include Services

Question:

We have executed a Murabaha transaction with one of our clients. This included an assignment of fitting aluminum as per provisions of a contract signed between us and a contractor. While the contractor was on the process of executing the work, there appeared some additional work which was not stipulated in the contract. The client with whom we transacted, instructed the contractor to execute the additional work and that he would inform the Finance House accordingly. Actually these additions were in accordance with the previous specifications. There would be a variance of price between the previous work and the new additions. The client has informed us of such additions after work completion.

With the foregoing in mind, may the Finance House pay value of the additions to the contractor and sell them to the client taking into

consideration that we have already completed our transaction with the client and closed his records.

Answer:

If the contract concluded between Kuwait Finance House and the contractor stated that issues of common interest may be completed based on the contract price, then, the Finance House has to pay value of the new works to the contractor. This additional payment shall be referred to the client. If however, the contract does not include such a provision while at the same time the common interest necessitates its execution, the matter would have to be governed by customary practices. The client shall be demanded to settle the additional amounts as well as the agreed profit in accordance with the contract signed between the Finance House and the client.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (434).

(3-8) Client Benefiting from Commissions Given to the Bank in Connection with Murabaha credit

Question:

May we share with our correspondent banks in whatever commission that they may get from exporters in their countries generated from opening our documentary credits known as circulation of shipping documents commission? Also, is the collected amount is considered to be the Finance House right or should it be returned to the client account lodged at the Finance House irrespective of being for cash credit or Murabaha?

Answer:

The client should be notified that you would be earning commission from the foreign bank which would be accounted for you. But if you do not declare it, then it will be for the client. With regard to Murabaha credits, if this is understood that it would be granted, then it should be deducted from the principal amount as per Murabaha provisions.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (458).

(3-9) Adding Bank Departmental Commissions to the Commodity Price

Question:

Is it allowed to add commissions levied by credit department from commercial department and consider them to be charged as part of the expenses born by the client in Murabaha operations?

Answer:

Having undertaken a lengthy research, it is established that it is not permissible to add commissions levied by credit department from the commercial department. Further, it is not permissible for the commercial department to add the basic commission because it has been set by the Finance House. It is not considered as additional expenses added on the commodity price in Murabaha deals.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (457).

(3-10) Dropping Compensation Amount Paid by Insurance Company from Commodities Value

Question:

In cases where value of the damaged commodities is minimal (20 - 50) Dinars, would it be necessary to drop an amount proportionate to the damage value from the price or is it enough to pay to the purchase promisor the compensation amount received from the insurance company?

Answer:

If the method is based on Murabaha, it is necessary to drop the minimal amount of the damaged commodities value from the price, because Murabaha sale is based on honesty. Any change in price should be notified to the client. If, however, the sale is not based on absolute honesty sale mode, the sale shall be effected according to the mutual agreement of the two parties.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (368).

(3-11) Adding Demurrage Charges to Commodity Cost

Question:

In a Murabaha operation, demurrage charges have been paid on goods imported from Italy and arrived at Kuwait Port. Due to delay of documents, demurrage charges have been levied. The delay was caused by the foreign bank and the post office. The purshase promisor is rejecting to pay such charges. What is the Shari'ah solution hereto?

H.E. the President has raised the following question:

What is the relationship between the exporter and the Finance House**?**

Answer:

Kuwait Finance House shall bear the demurrage charges which were entitled before concluding its contract with the promising buyer prior to enabling the buyer to receive the commodities. This is so even if it has been known at a later stage after contract signing and enabling the buyer. Such charges paid by the Finance House

should not be attached to the price in Murabaha sale because it was not mutually agreed to be added to the price as a cost. Demurrage charges levied after the contract and buyers' ability to receive the commodities, should be born by the purchaser. According to the Shari'ah, the contractual relationship effects and obligations should be maintained between the Kuwait Finance House and the exporter, not between the exporter and the promising buyer. The exporter should be duly notified.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (447).

(3-12) Purchase orderer Benefiting from Discount Granted to the Bank

Question (1)

May a client buying a car benefit from a discount granted to the Finance House after having concluded a Murabaha deal with him?

Answer:

Whereas the sale has been performed on a Murabaha method (as stated by the official in charge of the operation), the cost is of essence. Any discount in this juncture shall be attached to the original price. The discounted price shall be considered to be the base price. Therefore, the client shall benefit from it being his legitimate right.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (76).

Question (2)

Is it permissible for Kuwait Finance House to buy goods by the rates prevailing in the market which are subject to discount and then after having possessed it sell the same goods to another party in cash or credit, through Murabaha or bargaining? And, is the third party entitled to a discount rate, if any?

Answer:

The Finance House may buy such goods using the discounted market rate. After possession, it may also sell it in cash or credit whether through Murabaha or bargaining at a given price. If the Finance House is granted a discount, the third party, too, shall be entitled to it provided that the buying process was on Murabaha basis whether in cash or credit. But it would not be entitled to the discount if the purchase deal was on bargaining basis.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (102).

Question (3)

A client has approached us and requested to buy certain goods which he described and specified. Same was bought from the goods owner for our account. Then the same was sold to the client on Murabaha basis. At the time of paying the price, we were granted special discount. Is this discount considered to be our privilege or is it a right of the client to whom we sold the goods?

Answer:

If the sale deal was completed on Murabaha basis, any discount on the buying price whether preceeding or following, shall be the client's right. This is because Murabaha sale is governed by honesty and the buyer has given you a profit on your buying price. Thus, if you obtain a discount from the seller on your purchase price, the discount shall be a right of the party who bought from you on Murabaha basis.

If, however, the sale to the client was effected on basis of a certain price on bargaining whether in cash or credit and not on Murabaha, this discount that you would obtain from a seller shall be your

privilege. This is because there is no relation between your buying price and your selling price irrespective of being higher or lesser and the party buying from you is not concerned with your buying price.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (105).

(3-13) Charging Against Insurance:

Question:

Please advise whether or not we may include insurance charges in Murabaha cost.

Answer:

The question has stated that insurance in Djibouti is compulsory.

The answer is: the insurance is included in the cost but the insurance amount shall not be subject to the profit rate in Murabaha. Instead, its value shall be added to the price (capital) after having calculated the profit. This is because it is not subject matter of sale like a commodity. But, it is a burden that has to be added in its net figure without a profit rate thereon.

Source:

Al Baraka Book of Shariah Issues part (1), and (2), Fatwa No. (67).

(3-14) Charging Distribution Agent Commission:

Question

Is it allowed to pay a commission value to the purchase promisor in cash and then add up its value on the commodities price or should we deduct its value from the total commodities price and charge him for the net only and then calculate the profit value on the net. It should be noticed that some clients insist on payment of commission in cash because it is related to agency activities and not connected to trading in commodities.

Answer:

It is permissible to pay value of the commission relevant to the commercial agency handling the imported goods on promising or Murabaha basis. If the purchase promisor is himself the commercial agent for the commodity, then it should be paid to him by an order from the exporter.

In all cases, the Finance House may charge such commission as part of the cost and add it to the price along with its profit.

In this instance, the Finance House, when paying the commission to the commercial agent has a separate capacity different from the promising and Murabaha operation. This means that it is a payment agent authorized to pay on behalf of the exporter the funds entitled on the exporter for the commercial agent who is also the purchase promisor.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (89).

(3-15) Charging of expenses which Appear after the Murabaha Contract

Question:

In certain Murabaha credit cases, the correspondents would deduct part of their expenses after a long period of time. By then, the overall commodity value would have been calculated and the final sale contract signed with the Kuwait Finance House clients.

From the Shari'ah point of view, are we allowed to deduct such expenses from the clients account?

Answer:

It is essential to clearly state all expenses of the Murabaha in the sale contract signed with the client so that the Finance House may deduct it later on, if any.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (122).

(4)

Provisions of Goods which are the Subject matter of Murabaha

(4-1) Goods not Possessed or Received

Question (1)

Please provide the Shariah opinion towards the following offer submitted to the bank:

This is in respect to financing the purchase of video cassettes (of National model), and also air conditioning units to be sold on Murabaha. An application was presented by a client seeking consent on Murabaha for the purchase of the aforementioned equipment. In his request, he stated that the equipment have been bought from a certain firm. He enclosed along with his request an invoice relevant to those goods, indicating that he was indebted to that (client) and he requested the bank to pay value of such equipment in Egyptian Pounds. The above mentioned client has demanded the bank to settle the attached invoice amount and that he has undertaken to pay an amount exceeding the invoice amount. He has also undertaken to pay 10% of the buying price and he requested that the balance price amount to be paid in installments spread over 4 months.

Answer:

The Board perceives that the transaction, as illustrated in documents is a Murabaha sale,and it is absolutely invalid in its current form. This is because a Murabaha sale means to sell out a commodity that you possess by a price that you have paid added to it a profit margin agreed upon by the party interested in buying it on Murabaha method. However, the papers lodged in the file do not indicate that the bank is in possession of a commodity to be sold on Murabaha method. The document at hand is only an invoice for a commodity bought by the client who is requesting the bank to pay value of such goods against what he has declared in his aforementioned request. The Board has therefore decided to disapprove execution of this transaction and other similar transactions for being inconsistent with the Shariah rules in terms of Murabaha sale.

Source:

Shariah Board, "Book of Fatwas ", Faisal Islamic Bank of Egypt, Fatwa No. (8).

Question (2)

A question posted by a dealer with Kuwait Finance House.

A person desires to buy a property from another person for a specific amount, say One Hundred Thousand Dinars. The buyer has an intention of selling it to a third party on Murabaha method. The buyer and the seller may disagree on the final price.

Is the third party eligible to pay the difference to the seller as a grant (hibah) from him in order to facilitate the contract signing process and so that the third party may earn some benefit by way of buying from the purchaser. Payment may be effected prior to or after contract signing. What is the Shariah opinion in paying such a difference by the client bearing in mind that promising buyer's obligation to pay the disputed difference amount between the property owner and the Finance House is a verbal agreement between the promising buyer and the owner. This includes promising buyer's obligation to buy the property in full price in addition to paying the difference while the Finance House would pay the remaining balance.

Answer:

Contracting between Kuwait Finance House and the owner as in this case is not permissible, because the owner is selling something which has gone out of his possession and became the promising buyer possesion, which is non permissible because the owner would appear as a principal. In case the Finance House happens to know about this issue, it should refrain from entering into a contract with the property owner due to the fact that it would be contracting with a party who does not possess the property.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, Part (1), and (2), Fatwa No.(311).

Question (3):

Is it permissible to sell goods on Murabaha basis while the goods are stored in a location other than the place of sale and has neither been seen or received by the bank?

Answer:

It is a prerequisite for the bank to possess the goods even if it is a constructive possession. Thereafter, it sells the goods to a third party (buyer) through Murabaha.

Source:

Shari'ah Board, "Fatwas ", Islamic Bank of Western Sudan, Fatwa No. (14).

(4-2) Goods not allowed for Importation Except for the Purchase orderer

Question:

Is it permissible to import goods for the purpose of selling it on Murabaha although it is not allowed for importation except for the promising buyer based on a special approval from the government authorities, e.g. medicine approved by the Ministry of Health and factory equipment to be approved by the Ministry of Commerce and Industry?

Answer:

It is permissible to import goods to be sold on Murabaha even if its importation is restricted only for promising buyers by virtue of securing a license from specific authorities. These provisions are procedural ones and have no relationship with the contracting essence. Meantime, it is important to observe the administrative requirements in terms of this transaction's feasibility because lack of honoring the promise will lead to keeping the sellor under the

promising buyer's mercy due to lack of other clients. Preferably, in such serious cases, promise keeping should be mandatory.

The Reverend Sheikh/ Bader has some reservations on this issue and he conceives that refrain is relatively beneficial so as to evade putting shareholders money at risk. Additionally, this transaction is dubious as the banks activities are confined to financing operations only.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, Part (1), and (2), Fatwa No.(305).

(4-3) Liability of Goods Damage Prior to Delivery

Question (1):

A client has approached Kuwait Finance House on the intention of buying certain goods. When Kuwait Finance House bought the goods by way of opening Murabaha credit, it has been noticed that the goods sustain some damages and that the insurance company would arrange for compensation duly.

What is the correct action for handling this issue in case of partial damage, total damage, partial loss or total loss?

Answer:

If it is proofed that the goods has some defect, (whether partial or total loss), the client may approach the Finance House and claim compensation equivalent to this loss. The Finance House, on its turn, should revert to the exporter or the insurance company, whichever it prefers.

In case of a partial or total damage, which may cause the goods to be used as intended, then, this will be considered as a loss. But if it

was possible to make use of it albeit its shortcomings, it would be considered as defective and thereby giving the client an option of defect. This means that, the client has the choice of either claiming equivalent value of the defect (damage) or return the entire goods or accept as a whole.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, Part (1), and (2), Fatwa No.(142).

Question (2):

With reference to the provisions of Article No. 22, Para A & B of the bank regulation No. 13 for the year 1978, I would like to advise you that the bank was not exposed to any loss in the joint investment operations for the year 1982 except for a loss of 749,295 Dinars due to the following: -

First: An agreement has been reached with one of the clients whereby the bank would buy sanitary ware and sell them on

Murabaha method to the former. A Murabaha sale contract has duly been signed with the purchase oredererer.

<u>Second</u>: Based on the aforementioned contract hereinabove (item No. 1), the client has requested the bank to procure sanitary ware from abroad on Murabaha.

<u>Third</u>: The bank has opened documentary credit for goods importation from abroad. The client has urged the bank to have the goods insured against consignment loss only. The client has signed a document assuming any liability related to loss of goods resulting from lack of total insurance thereon, as such type of goods are loaded in containers and the exposure to damage is unlikely.

<u>Fourth</u>: At the client's request the bank insured the goods against consignment loss rather than total insurance as the installments of total insurance is relatively higher on such type of goods. Such high installments would negatively influence the client's profit, bearing in mind

that the bank regulation does not oblige the bank to arrange for total insurance.

Fifth: Upon transport of goods from Aqaba Port to Amman City, the truck loaded with the goods has overturned thereby causing some breakage damages to the goods. Breakage damages were estimated at 2374 Dinars.

Sixth: The client claimed the bank to compensate him against value of the damaged goods for not delivering the entire shipment to the designated delivery point. Following the negotiations with the client,and in light of his signed commitment it has been agreed to settle the case whereby the bank would pay 50% of the loss while the client would incur the remaining 50%.

Seventh: In view of the above settlement, the net loss value incurred by the bank has amounted to 295,794Dinars after having deducted the profit generated from the Murabaha transaction.

In light of the foregoing, and whereas the loss has resulted due to force majeure without any transgression or negligence and prior to consigning the goods to the client, the loss has been entered on the joint investment revenues account for the year 1982. The matter will be presented to the board of directors for ratification.

Answer:

It is apparent that according to the agreement between you and the client whereby the goods should be delivered at Amman and that during the goods transport from Alaqaba Port to Amman the truck has overturned causing break damages there to. Damage value was estimated at 2374 Dinars.

Upon request of the client for compensation for damaged goods, negotiations have been carried out resulting in an amicable solution to the effect that the bank would bear 50% of the loss while the client, too, would shoulder the remaining 50%. After having put the transaction profit aside, the bank was liable for

…………..Dinars taking into consideration that the damage has resulted due to force majeure in which the buyer was not involved.

It is understood that the Islamic bank regulation requires that imported goods be totally insured even if they are insured against damage prior to delivery. Shari'ah on the other hand do not necessitate insurance coverage. Whereas the damage has occurred before consigning the goods to the client, the guarantee in this instance will be on the seller's part (bank). This is because if the sold goods were damaged before being received, in such case it is definite that the seller is the guarantor.

According to Article No. 25, para E, of the Jordanian Islamic bank regulation No. 13/1987, the board of directors enjoys powers including the following:

Ratification of settlements, reconciliations and acceptance of arbitration in cases approved by the bank management. Therefore, the board of directors is empowered if such settlemant is proved accurate to ratify the settlement, approve it and record the loss

amount on the joint investment revenues account in accordance with above mentioned Shariah guidelines.

Source:

Jordan Islamic Bank for Finance & Investment, Book of Fatwas, Part (1), (2), Fatwa No.(34).

Question (3):

In case some of the goods imported for the client (the purchase orderer) being damaged, who is responsible, the bank or the client, considering that the damage has occurred after the goods were transported from the port to the bank's stores.

Answer:

If the goods imported for the client were damaged after having been transported to the bank stores, the bank shall be liable for the damage.

Source:

Fatwas of the Shari'ah Board of Qatar Islamic Bank, Fatwa No. (44).

(4-4) Condition of the Commodity Possessed by the Purchase Orderer.

Question:

A client has requested the bank to conclude with it a Murabaha sale contract in order to buy sesame franchise from a company in which he is a partner in favour of a company that he owns. The bank concurred to enter into the transaction and started its execution. However this was unattainable because the goods could not be possessed as it was shipped to Port Sudan. Consequently, Fatwa is sought from the Shariah Board of the bank concerning the Islamic Shariah opinion on this transaction.

Answer:

Shariah Board conceives that the client owns both companies;in the first one he is the owner while the in second he is a partner. He is requesting the bank to buy from himself and sell out to himself. This condition, contains an apparent advantage for himself. According to Islamic scholars this is an invalid condition which is favouring one of the partners, and in contravention to the contract

terms. It is also a condition which requires entering into two contracts in regard to one transaction because the client buys and sells for himself. The Prophet, May Peace be Upon Him abhorred combining two deals into a single deal. Also, among the binding conditions in sale contracts, it is essential that the contract should be executed by two separate and distinct persons who transact in terms of offer and acceptance. In this instance, the contract is executed in terms of buying/selling by a single person. Such a contract is unacceptable in Islam, because sale contracts must not be effected by one person. Furthermaore, the client has set forth a condition whereby the goods would be bought from him and sold to him. This is impermissible on the grounds of the Prophet's saying (hadeeth) " … Two conditions in one contract is not allowed ". We are of the opinion that the bank should not pursue execution of this deal as it consists a major artifice.

The contract is not Shariah acceptable. The fact that the goods has been stored in favour of the company does not justify its permissibility, becasuse it could not been possesed by the bank. A condition of the Murabaha contract is that the bank should possess

the goods and thereafter offer it to the client who has the choice between buying it on the designated profit or rejecting it altogether. Furthermore, this particular contract consists of several dubieties for which reason we advice not to be pursued or approved.

Source:

Shari'ah Board, Shariah opinions "Fatwa", Islamic Bank of Western Sudan, Fatwah No. (22).

(4-5) Buying and Selling of Shares in a Company

Question (1):

Partners have bought goods using the company funds. Is it appropriate for the bank to sell to one of the partners a portion of the company funds on credit Murabaha?

Answer:

It is permissible for one of the partners to buy part of the company funds on Murabaha whether on credit or immediate price. However, if he buys on credit, he may not sell to the company what he has bought from it, to evade Aynah sale.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, Part (1), and (2), Fatwa No.(228).

Question (2):

Please explain the Shariah opinion on an issue where the bank buys the share of one of the partners in a limited company. And then sell it on Murabaha to another partner in the same company.

Case Clarification:

We have been approached by one of the partners whose name is, say, Zaid in a limited company formed of two other persons namely Hasan & Ali in addition to Zaid. He wants fthe bank to buy him the share of the partner Hasan amounting to (30000 Dinars), who intends to withdraw from the company and sell the same share to Zaid on Murabaha for 24 months at a profit rate of 13%. It should be noticed that the share of the partner Hasan represents a part of the company assets composed of goods, machineries, equipment, establishment expenses and debtors etc. .

Would you explain the Shariah opinion on the request made by the partner Zaid urging the bank to buy the share of the partner Hasan in the same company to be sold to the partner Zaid on Murabaha at

an agreed profit rate, provided that the share value along with the bank profit should be settled within 2 years?

Answer:

If the company is a limited company composed of 3 persons and its assets are formed of goods, machineries, equipment, establishment expenses and debts, it appears to me to be as follows:

First: the question stated that company is indebted and its debts were not specified. Selling of debts is prohibited, as narrated by Al-DarQutni & Al-Baihaqi who said "it is forbidden to sell debt by debt " (ref. Fiqh Al-Muamalat of Maliki School)".

Second: It is possible to identify the company's assets and estimate whether it is in loss or profit so as to eliminate the ignorance (Gharar) element which is likely to undermine the contract.

Third: Assuming that there is no objection from the Shariah perspective, it would still be important to look into the original company contract to verify that the necessary

provisions are maintained in line with Article No. 480, No. 584 and 586 of the Jordanian Civil Code in terms of buying/selling shares within a company. It would also be necessary to ensure that the bank interest in this contract is preserved.

For all these remarks, it appears to me that the Shari'ah opinion requires that this proceeding should be stopped.

Source:

Jordan Islamic Bank For Finance & Investment, Book of Fatwas on Economic Issues, Part (1), and (2), Fatwa No.(13).

Question (3):

Kindly explain the Shari'ah permissibility as to whether or not it is for the Islamic bank to sell a share in a partnership in which it entered with one of the clients using Murabaha method.

Answer:

If the bank decides to put an end to the partnership, it may sell its share at its market value. The partner has priority in buying it

according to right of preemption, otherwise it may be sold to others.

Source:

Fatwas of the Shari'ah Board of Qatar Islamic Bank, Fatwa No. (30).

(4-6) Client Guarantee for Commodity Soundness:

Question (1):

Please advise whether or not it is Sharia permissible for the client to guarantee the exporter in Murabaha sale?

Answer:

With regard to documentary credits on Murabaha and in order to handle cases of defects or shortage in goods/quantity, and in instances where the correspondent bank cannot be reverted to, and in circumstances where there is no prior knowledge about exporter except through the client, the Islamic Fiqh has devised certain precautions which ward off the Islamic Bank of such problems by demanding the client, when intending to buy the goods from an exporter selected by the client, to warrant the exporter's proper performance, by signing a warrant commonly known as "Darak guaranty" which signifies assuming the responsibilities of whatsoever damages the warranted party may be subjected to. This procedure used to be, and still is, customary amongst businessmen where it is conducted on the warrant of whoever party would deal

in the market. If any obligations are involved, the guarantor commitment shall be added to the guarantee party commitments. In this instance, the guaranteed party is the exporter and the guarantor is the client. Therefore, if situations similar to the aforementioned occur (defects, shortage in quantity or any irregularity affecting the value), the bank would be in a position to claim its entitlements from either of the two parties; exporter or client who has signed a warrant of exporter for proper performance. This warrant is entirely different from the Murabaha operation in terms of contractual relationship although it was initiated by a Murabaha. It is understood that the warrant may be linked to other contracts because it authenticates them. But the warrant in this particular connection is not linked to the Murabaha contract because it has not yet been concluded. It is however, connected to the intention and promising preceding the Murabaha.

Source:

Dallah Al-Barakah Group, Development and research Department, "Religious Answers on Banking Applications", (First Part), fatwa No. (63).

Question -2

A client has approached the bank requesting to buy goods using Murabaha sale method on credit. He requested the bank to buy him the goods from a designated exporter abroad. The bank informed him it was not familiar and acquainted with that exporter. The client stated that he knows it well and he has had previous dealings with it, and that he was prepared to accept liability towards any damages resulting from violations of such goods imported from that exporter in respect to the required specifications. Does this process conform to the Shari'ah?

Answer:

In purchase contracts, the customary process is that the buying bank would guarantee the purchased goods. The guarantee represents the risk that the bank ought to undergo which is the basis for the sale contract execution and the consequential loss or profit. The bank should set forth provisions in the contract and select representatives who would ensure safe arrival of goods in accordance with the required specifications. On the other hand, the

client may have full trust and confidence in the products of a certain factory or supplier of whom the bank has no knowledge. The client would then request to procure from this exporter and furnish the bank with a guarantee for the goods imported from that exporter.

The board has opted to defer the final answer to this issue for further research and to seek technical opinions thereon.

Source:

Fatwas of the Shari'ah Board of Dubai Islamic Bank, Fatwa No. (17).

Question (3):

A client has approached the bank requesting to buy goods using Murabaha sale method on credit. He requested the bank to buy him the goods from a designated exporter abroad. The bank informed him that it was not familiar with that source. The client stated that he knows it well and he has had previous dealings with it, and that he was prepared to accept liability towards any damages resulting

from violations of such goods imported from this exporter in respect to the required specifications. Does this process conform to the Shariah?

Answer

If the Purchase orderer stipulated to bear and accept liabilities of imported goods violation to the required specifications, the board opines that it is Shariah permissible, as it relieves the bank of the defects condition. It is also considered as a waiver of a right or mere omission. There is no objection to this from Shariah perspective, as it is supported by statements of Islamic scholars.

Source:

Fatwas of the Shariah Board of Dubai Islamic Bank, Fatwa No. (20).

Question (4):

A dealer is interested in buying vehicles from Germany. He knows the seller but is unable to open a credit facility to buy the required

vehicles as this would be time consuming and the seller might dispense the vehicles to other parties if he comes across a buyer.

The dealer wants the bank to buy the vehicles from the seller whom he has designated on condition that he would guarantee for the bank that the vehicles are free of any defects. He would also guarantee for the bank that the supplier would fulfill his obligations towards the bank in importing the vehicles as per the required specifications and at the designated time. He would further be liable to refund the vehicles price paid by bank which has not been imported. Additionally, he would compensate the bank against any damages resulting from this action.

What is the Shari'ah opinion in completing this sale as described?

Answer:

In order to ensure a Shariah permissible sale on Murabaha, the bank is obliged to guarantee that the goods are defect-free. The supplier, too, should honour his commitments in importing the vehicles according to the required specifications on the designated

time. Likewise, the bank should deliver such vehicles to the buyer upon arrival.

As the proceedings listed in the question relieve the bank of all guarantees collectively, the transaction is therefore not based on Murabaha method. The bank may, instead, execute the process on a different basis such as partnership (Musharaka), Modaraba transactions or by opening documentary credit if deemed appropriate.

Source:

Fatwas of the Shari'ah Board of Dubai Islamic Bank, Fatwa No. (98).

Question (5):

Documents were received concerning Murabaha credit based on which a sale contract was signed. The buyer could not receive the goods due to reasons beyond his control and Kuwait Finance House control. In such cases of non-arrival of goods, compensation is made by the insurance company, which later, revert to the

shipping company is which has damaged the goods. The shipping company has confirmed soundness of the goods but failed to deliver it.

What would be the status of goods for which forged documents were presented? Would the Kuwait Finance House be held responsible bearing in mind that the client has admitted liabilities related to behaviour of the exporter and warranted the exporter appropriate execution of the operation?

Answer:

If a warrant has been issued by the purchase promissor to the effect that he would guarantee whatsoever shortcoming may occur from the exporter in fulfilling his obligations, such a warrant would be in conformity with the Shariah, which is considered as (Darak guarantee). As such, the purchase promisor would be liable to guarantee for any damages hereto. But he shall not be obligated by the purchase contract for which he promised, because the subject contract has been either nullified or defective.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, Parts (1), (2), Fatwa No.(63).

Question (6):

With regard to Murabaha sales. it is customary that documentary credits are opened in order to import goods for the account of Kuwait Finance House. The Finance House might demand that the goods be inspected by a neutral third party prior to shipment. The party carrying out the inspection assignment would charge commission against inspection. In some cases, the promising buyer may reject such inspection activity on the grounds that the shipper is trustworthy. He may even write an undertaking and a declaration by which he would guarantee the exporter in terms of quality and specifications of goods. The question is:

What is the Shari'ah opinion in accepting such a warrant and an undertaking from the promising buyer?

Answer:

The goods, prior to contract signing is considered to be the property of Kuwait Finance House which is free to dispense it in any fashion. It may decide to have the goods inspected or otherwise. The promising party's instructions or waiver shall be considered a mere promise with no binding contract up to that stage. However, upon sale contract signing, the promising party may present an undertaking not to inspect the goods and that he would be the sole responsible party for any defect that might appear on the goods.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, Part (1), and (2), Fatwa No.(130).

Question (7):

What is the Shari'ah perspective in obtaining a warrant from the promising buyer on Murabaha sales for the safe arrival of goods to

Kuwait and in a good/acceptable condition in terms of health considerations?

Answer:

This is permissible from the Shari'ah point of view because the warrant is considered as a donation contract (Tabaru). It may therefore be issued prior to initiation of the right maturity and is in this instance it is considered as "Darak" guarantee.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, Parts (1), and (2), Fatwa No.(202).

Question (8):

What is the Shari'ah opinion on the following statement:-

We hereby confirm and guarantee that we may request Kuwait Finance House to sell us goods on Murabaha after it buys the goods for itself from exporters nominated by us abroad. Hence, we undertake that such exporters shall be of good reputation, adequate

financial position and capable of executing their obligations towards Kuwait Finance House properly on our entire responsibility. We further guarantee for Kuwait Finance House their proper execution of whatsoever goods is required from them to export. We undertake to pay any compensation in favour of Kuwait Finance House against any damages caused by the aforementioned exporters on the first request made by Kuwait Finance House irrespective of the guaranteed party discretion.

Answer:

This declaration is known by Hanafi School as "Darak" guarantee meaning guarantee for consequences and commitments that might occur in the future upon dealing with an individual. It is also named guarantee preceding right maturity. The guarantor is considered obliged towards the guaranteed party for such commitments that would mature later. The guaranteed party is eligible to claim whichever he wishes. Thus, the foregoing declaration/ statement is permissible and obligatory from the Shari'ah perspective.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, Part (1), and (2), Fatwa No.(224).

Question (9):

Some Murabaha clients demand a type of insurance on the imported goods which is less costly compared to the overall insurance usually applied by Kuwait Finance House on goods. This is due to high premium in addition to low potential risk of goods been subjected to damage particularly when shipped inside tightly closed containers. They are also prepared to write an undertaking for Kuwait Finance House whereby they admit liability of damages caused by their replacement of overall insurance premium by low cost premium. May we accept the client's undertaking to be liable for the damage caused by such an initiative particularly when the client is trustworthy financially sound and credit worthy? As a matter of fact, there are two types of insurance:

First type:

It covers risk of loss or responsibility or total expenses comprehensively. This means if any damage occurs to goods stuffed inside a container unit, the insurance company would compensate the insured party for the damaged part.

Second type:

This type of insurance covers risks of non-complete delivery of a packaging unit as described in the shipping document due to misplacement for reasons unknown and unrecognized to the shipper.

However, if a partial damage happens to a packaging unit, such insurance would not cover it, and it is not included in the insurance policy.

Answer:

Insurance on imported goods is effected for property preservation which is done in favour of Kuwait Finance House. If the insurance is reduced or does not cover all risks and damage occurs, then, this

would be on the account of Finance House, being the goods owner. The promising buyer may not be held liable unless he himself offers to accept part of the liabilities. The official in charge of the deal at Kuwait Finance House should take precautions to evade risks.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, Part (1), and (2), Fatwa No.(371).

Question (10):

The following is a sample form presented by the documentary credit department relevant to authorizing a person to procure goods in the name of Kuwait Finance House to be shipped also in the Kuwait Finance House name. The client promised to buy the goods after being shipped on the bank's name.

The sample form reads as follows: -

M/s Kuwait Finance House,

Dear Sirs,

Please be advised that we received an offer from Messrs ……….. In order to export the following goods to Kuwait according to the pro forma invoice no. ………… dated ………. and the listed price. The goods will be delivered in Kuwait and would be insured by………… bearing in mind that the shipment will be effected by …………. (date) from ………….to Kuwait directly without any transshipment from one vessel to another. The goods will be shipped on ………… vessel, ………aircraft. or ………. truck.

Therefore, we request your authorization to represent you in selecting the goods after having verifying its specifications, types, adequacy and prices. We will then ship the goods to you.

We further agree to buy the said goods from you on Murabaha after been shipped to you. subject to your concurrence, on a profit margin amounting to ….% of the goods cost.

Additionally, we guarantee for you the abovementioned exporter in terms of his adequate performance in shipping the goods in your

name. The shipping documents would be dispatched to you for collection.

Best regards,

Name…………………

Account No. ………………….

Tel. No. ………………………….

Answer:

The abovementioned sample form is approved. Upon documents arrival it would be considered as acceptance of sale offered by Kuwait Finance House given through its agent.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, Part (1), and (2), Fatwa No.(442).

Question (11):

An arrangement has been made with a client regarding dealing in sugar commodity. After we opened the credit documents, such documents were delivered to the Finance House. Subsequently, we notified the client, based on the documents that the goods has been shipped and it is ready, so he may approach us to conclude a contract and receive it. Later, it was disclosed that the documents were forged. When the client was asked to pay compensation against the declaration and guarantee signed by him as a guarantor of the exporter, the client has had some reservations on how he would be liable for paying compensation at a time when we have sent him a letter stating receiving of goods.

Answer:

Claiming that compensation has no relation neither with the promising nor with the contracting procedures or delivery. Instead, it is a result of a previous warrant where the promising party has guaranteed the exporter for adequate performance and that the client would be liable for whatsoever consequences connected to the exporter's violation of any specifications or limitations entailing financial commitments known as "Darak" guarantee. The

promising party's liability originates from the warrant not from the promising act or consequential procedures including demanding his attendance to sign the contract.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, Part (1), and (2), Fatwa No.(448).

Question (12):

Please advice Shariah opinion on the following transaction:

The bank imported a certain quantity of goods based on Murabaha with a client. When the goods arrived at Doha Port, we dispatched an employee accompanied by the promising buyer for the purpose of goods inspection and delivery to the client. However, the client refused to open the containers and boxes because he wanted them to be kept therein until his need arises. Additionally, there was no space to keep the goods in case the boxes were open.

Since this practice of the buyer may cause liability to the bank for an indefinite time which may extend for along time, may we accept

an undertaking signed by the client in favour of the bank relieving the bank of any unseen defect liability? It is noteworthy that the bank is prepared to assume responsibility of the unseen defects if the goods were inspected upon receipt /delivery of the boxes?

Answer:

The unseen defects may not appear except after a prolonged duration, and the goods may sustain damages due to storage. Therefore, the goods must be delivered and the bank relieved of the unseen defects liabilities. The concerned parties may agree upon a specific period of time after which the bank would be set free of any defect responsibilities that may crop up later. Such period may be agreed to be 3 days from goods delivery date.

Source:

Fatwas of the Shari'ah Board of Qatar Islamic Bank, Fatwa No. (31).

Question (13):

Your honour is aware that Murabaha sale includes that the bank as a seller guarantees the sold goods of any unseen defects. On these grounds, the bank deals in new goods in order to minimize the defects arising from the old and used goods. This is because the bank does not have adequate technical skills enabling it to inspect the entire types of goods and machineries soundness. We also cannot ascertain that the required price represents the actual goods value.

One of our prominent clients has contacted us requesting to buy used cars and sell them to him on Murabaha on condition that he would relieve us of unseen defects liabilities on the goods.

Is such Murabaha transaction permissible when the buyer waives his right of rejecting the goods sustaining unseen defects?

Answer

Concerning your enquiry about selling cars to a client on condition of seller's non responsibility towards unseen defects, such an issue

is called by scholars as "Sale on Condition of Relief from Defects". The Islamic scholars have disagreed among 4 arguments:

First:

According to Al-Shafie, in the most likely statement, and the narration of Ahmed, the condition and contract are correct. He would be relieved of all except the defects that he was not aware of. If the seller knows of a defect, he must notify it out to the buyer. If he does not notify him about it, the case would be considered as concealing. In this instance, the seller has the option to reject for being defective. Imam Malik concurs with this opinion and particularly in slavery.

Second:

According to Hanafiya & Shafie statements, and Ahmed in a narration, both the condition and contract are correct. The seller is rendered free of any defect existing at the time of contract irrespective of whether he knew about it or not.

Third:

The statement of Malik, Shafi as well as Ahmed in a narration to the effect that the contract is correct whereas the condition is void.

Fourth:

This is a statement released by Al-Zahriya and Shafi as well as Ahmed in a narration saying that the contract is void.

These are four arguments, but in my opinion the most likely one is the first statement which says that both the contract and condition are correct and that the seller is relieved of any defect liability existing at the time of contract of which he was not aware of.

However, if he knew of the defects and concealed them, the buyer would then be entitled to reject for defects.

It has been narrated that Abdullah Bin Omar has sold to Zaid Bin Thabit a slave on condition of being relieved of any shortcomings for an amount of 800 Dirham. Later, Zaid discovered some defects and decided to return him to Abdullah Bin Omar who in turn refused to accept him. They both raised the case to Othman who

asked Ibn Omar ; Do you swear by Allah that you have no knowledge of this shortcoming? He responded: no. He then returned the slave to him. Ibn Omar later on sold the slave for 1000 Dirham. Refer to the interpretation by Ibn Kodama.

Based on the foregoing, the bank, in this instance is entitled to set up for itself a condition whereby it would be relieved of any defect liability particularly those of which it is not aware, and the buyer, on the other hand, knows more about it because he is the one who requested the bank to buy the cars for him.

Source:

Fatwas of the Shari'ah Board of Qatar Islamic Bank, Fatwa No. (78).

(4 – 7) Murabaha in Shares

Question (1):

What is the Shariah opinion with regard to the following?

A government authority offered to sell to Al-Rajhi Banking & Investment Company some shares owned by the government in an electric company or any other company provided that Al-Rajhi Company pays in cash the value of the shares to the government. However, AL-Rajhi Company has the right to keep these shares as assets or sell them in the market, to the government or any other body, at its own discretion.

Answer:

There isn't any objection, based on Shari'ah perspective, against this transaction, but if the company decided to sell these shares to the government while their price had not changed by increase or decrease during the period in which the company owned these shares and no time has elapsed to rule out fraud concerning the seriousness of sale, then Al-Rajhi should not sell them at a price

more than the purchasing price. However it is permissible to sell them to the government at the purchase price or less. because, if the shares sold at a price more than the price of purchasing then such transaction will be the reverse of Al-Einah sale transaction in which case scholars here pointed out that, in accordance with prophet's sayings, the reverse of Ayna and Ayna sale are standing on same footing regarding prohibition.

Source:

Al-Rajhi Banking and Investment Company, Shari'ah Board, "Collection of Fatawa", Resolution No. (17).

Question:

Please provide Shari'ah opinion on the following question:

A customer approached the company to purchase some shares and requested the company to purchase the shares and then sells them to him on credit. So what is the Shariah opinion with respect to this matter)?

Answer:

The company is entitled to purchase shares of companies which their circulation by selling or buying is permissible if regulations of Al-Rajhi Company permit the transaction. However, after actual **possession of** such shares by the company then it is permissible to resell them to any body, in cash or installment basis.

Source:

Al-Rajhi Banking and Investment Company, Shari'ah Board, "Collection of Fatwa", Resolution No. (51).

(4- 8) Doubtful & Prohibited Commodities

Question:

What is the Shariah opinion regarding opening of credits to import cigarettes and " Khat plant"?

Answer:

Business transactions on cigarettes are based on Shari'ah opinions concerning cigarettes themselves. Fiqh opinions differed widely over smoking of cigarette since cigarettes have appeared to exist. Shariah opinions ranged between utter prohibition of smoking, abhorrence and permissibility. The most accepted opinion is the general abhorrence. Utter prohibition would be applicable to those whose health condition might be adversely affected by smoking by virtue of a medical report. This includes other damages such as jeopardizing a religious worshiping duty or hampering family obligations. The ruling in disputed matters is guidance and not rejection. Also, the fundamental righteous stand is avoiding the abhorrence unless its avoidance would result into loss of interests which are more important than the subject matter itself, as shown

in the question. I.e. a company which was interested to open a self credit facility at the bank to import cigarettes without financing has other activities and it wanted to shift such activities to the bank if mutual dealing in this field was feasible. In other words, it is interested to switch all - not some –of its activities to the bank. Thus, an achievement whereby the company transforms its activities to a non-usury function is a cause outweighing avoidance of abhorred practice, particularly with regard to the aforementioned restriction related to non- financing the credit facility in addition to the difference over the subject matter essence. This advantage shall be dropped if the issue is utterly prohibited.

With regard to" Khat plant", opinions of Muslim scholars had inclined towards its total prohibition with the exception of few scholars from Yemen. Doctors on their side have listed this product as a narcotic. Its adverse effects are proved as its users were hampered from practicing their religious rituals and daily practices particularly after its initial stage. Here, the entailed damage overweighs the benefit required from the bank in favour of the company by importing it particularly that the difference over Khat

plant ruling is of minor consideration but it is prohibited by most scholars, as indicated earlier. However, there is no objection in opening an account on demand for the "Gat" company because it is a general service not confined to dealing in "Gat". As such, in reply to the question, there would be no objection in opening a self credit facility to import cigarettes, without importing Khat plant, it is advisable to refrain from such dealing.

Source:

Dallah Al-Barakah Group, Development and research Department, "Religious Answers on Banking Applications", (First Part), fatwa No. (4).

(4-9) Hypothecation of Commodity Sold in Murabaha Mode

Question:

Is it permissible for the Islamic bank to involve a commodity sold on Murabaha as a guarantee?

Answer:

Contract is always binding to the contracted parties. If the selling party puts a condition to withhold the commodity until the entire price is paid, it is thus a condition to be honored as a contractual obligation. However, the seller is entitled to withhold the commodity if its price is immediate, but If the payment is on credit, the seller should not withhold the price as he agreed to delay the price but he may mortgage the commodity on fiduciary basis a matter that should be stipulated in the contract until he is repaid the full amount to secure the bank's right as the fiduciary mortgage does not prohibit the owner to dispose of his property until the price is recovered thereby preserving the bank's right.

Source:

Fatwas of the Shari'ah board of Dubai Islamic Bank, Fatwa No. (22).

(4-10) Damages Resulting from Delay of goods Delivery

Question:

You are aware that Murabaha transactions which require an opening of a documentary credit are settled after the goods arrival to Doha port as the client is required to come forward to receive the goods.

Since the bank does not possess any stores, it has been a common practice to receive the goods at the port. It is understood that demurrage and storage charges are levied by the port authorities on goods overstaying in the port premises.

Such practice usually harms us though we have no control to evade the damage particularly if the client delays settlement of his Murabaha transaction and reception of goods consignment.

We therefore propose that a provision be added to the Murabaha contract stating that the demurrage and storage charges should be the buyer's responsibility thereby urging him to receive the goods

as soon as they arrive, and avoiding any potential damage to the bank.

Is this practice in conformity with Shari'ah?

Answer

The board opines that Para No. 4, 5 and 7 of Murabaha contract contain a sufficient statement to prevent such harm. Therefore, it is not necessary to include the proposed addition, as Para No. 4 promulgates that delivery shall take place in the port of arrival and Para No. 5 stipulates the buyer undertaking to receive the goods upon arrival and hence would be held liable for delayed delivery and the consequential damages.

Source:

Fatwas of Shari'ah Board of Qatar Islamic Bank, Fatwa No. (32).

(4-11) Delay in Payment of goods Price to the first Seller

Question:

A client of the bank desires to buy ready made building materials through opening of a documentary credit, is it permissible for this client (The purchase orderer) and also the consultant authorized by the bank to receive the goods in a good condition before the bank pays the goods value to the seller?

Answer:

It is permissible to defer payment of goods price to the first buyer until the last buyer receives the goods and acknowledges that he received it in a good condition provided that the first sale contract is concluded.

Source:

Fatwas of the Shari'ah Board of Qatar Islamic Bank, Fatwa No. (40).

(4-12) Establishment and Selling of a company on Murabaha basis

Question

A customer offered to Al-Rajhi Company to establish a company to buy a number of oil fields and equipment for an amount of 16 million Dollars. It would pump into the company a cash flow amounting to 9 million Dollars. Later, the client would buy this company from Al-Rajhi Company on credit for an amount to be mutually agreed. The concept is that the client is in need of the company as above described since it possesses the assets and the liquidity necessary to develop the assets.

Is such contracting permissible?

Answer

This type of Murabaha falls in the category of Murabha transactions which the Shariah board requested the company to quit them and the company had duly complied with this request.

Source:

Collection of Fatwas of the Shari'ah board of Al-Rajhi Banking & Investment Company, Resolution No. (118).

(4-13) Expropriated property

Question

A person owns a property and the government authority decided to expropriate it for public interest provided that its value is paid to the owner in cash or in annual installments. The estimation committee has estimated the price. The owner reserves his right to object over such estimations to the appeal committee and the government property department also has the right to object.

Is it permissible for the asset owner after having known the estimated value of the property to sell it to some other party for an advanced price lower than the value estimated by the committee?

Considering that it is probable that the objection committee may opt to change the estimated price – upwards or downwards- and its decision would be final and binding to both parties?

Answer:

Government's expropriation of an asset for public interest is considered from Shariah view a compulsory sale which is

conducted solely upon the state's discretion and does not require consent of the owner. The expropriated property is no longer considered a property of the original owner; instead, it has become part of the public property irrespective of the owner's objection. The legitimate price to be paid is the equivalent price to be paid at the time of expropriation.

Therefore, the asset owner is not entitled thereafter to sell his property to another party, but if this sale was conducted by the original owner before the expropriation decision, it would have been considered Shariah acceptable because the original owner has disposed of his own property.

Source:

Kuwait Finance House, Book of Fatwas in economic issues, Parts (1), and (2), Fatwa No.(320).

(4-14) Deals contracted prior to Murabaha contract between the client and the bank

Question

Documents under collection under the bank's name were received which are related to a client without signing an application and purchase promise. Can this be considered as Murabaha or not?

If the answer is negative, what are the required procedures to consider the transaction as Murabaha and hence be permissible according to Shari'ah?

Answer:

Goods whose documents are sent to a bank for collection upon request of a client is not considered as Murabaha transaction unless Murabaha requirements are fulfilled before shipment and dispatch of documents. In this particular case the client did neither sign a purchase promise nor a purchase request and the bank has not been consulted in the sale operation since its inception.

Source:

Fatwas of Shari'ah Board of Qatar Islamic Bank, Fatwa No. (42).

(4-15) Commodity storage expenses and demurrage penalty etc.

Question -1

With regard to Murabaha sales, documents are handed over to the buyer to enable him receive the goods. In some cases, the goods would be subject to demurrage charges payable to the customs authority as a fine for delay in receiving the goods.

The question is:

Who bears payment of such demurrage fine, the buyer or the Kuwait Finance House?

Answer:

If default was caused by the seller i.e. The Kuwait Finance House, then, it shall pay the fine, but if it was from the buyer, then the later shall be liable for the fine.

Source:

Kuwait Finance House, Book of Fatwas in economic issues, Parts (1), and (2), Fatwa No.(129).

Question -2

In Murabaha transaction, demurrage charges have been paid for goods imported from Italy and arrived at Kuwait Port. However, due to delay of documents, demurrage charges have been levied. The delay was caused by the foreign bank and the post office. The buyer is refusing to pay such charges. What is the Shari'ah solution hereto?

H.E. the President has raised the following question:

What is the relationship between the exporter and the Kuwait Finance House?

Answer:

The Kuwait Finance House shall bear the demurrage charges which were due before concluding the contract between it and the promising buyer and prior to enabling the later to receive the goods, even if it was known later after the contract signing and enabling. Such charges which are paid by the Kuwait Finance House should not be added to the price in Murabaha sale because it

was not mutually agreed to be added to the price as its cost. However, demurrage charges levied after the contract and enabling the buyer to receive the goods should be born by the purchaser. According to the Shari'ah, the contract relationship, obligation and effects should be maintained between the Kuwait Finance House and the exporter, and not between the exporter and the promising buyer. The exporter should be duly notified.

Source:

Kuwait Finance House, Book of Fatwas in economic issues", Parts (1), and (2), Fatwa No.(447).

Question (3):

Is it permissible to consider storage charges of goods imported on Murabaha basis as part of the cost?

Answer:

Yes, it is permissible to consider storage charges of goods imported on Murabaha basis as part of the cost.

Source:

Fatwas of Shari'ah Board of Qatar Islamic Bank, Fatwa No. (43).

(4-16) Selling goods on Murabaha before possession

Question:

Venture Gulf Company, which is a client of our bank contacted, and offered us to sell a quantity of goods in a package deal. We used previously to buy from it the same goods over 3 months provided that we store them in the promising buyer's stores, Steel Structure Co."FASCO", because the bank have no stores. We later on sell part of these goods on Murabaha monthly in favour of the promising buyer, FASCO steel structure Company over a period of 3 months.

Kindly advise us of the Shari'ah opinion thereto.

Answer:

It is permissible to complete this transaction pursuant to Salam sale provided that goods specifications and delivery time are defined and on basis of advanced payment and deferred delivery of goods. It is not permissible to make an advance sale to"FASCO" Company before the bank receives the goods first.

Source:

Fatwas of Shari'ah Board of Qatar Islamic Bank, Fatwa No. (48).

(4-17) Re-evaluation of Commodity

Question

Please provide us with the Shari'ah opinion on the following:

The bank conducts Murabaha sale transactions. Some clients request the bank to buy goods from the local market. The bank would later on sell the goods to them at an agreed price in conformity with the market rate ensuring a reasonable profit for the bank.

The client would repay the value to the bank by cheques on different terms extended over several months. In some cases the client demanded postponement of repayment to match the aforementioned cheques maturity due to conditions related to the commercial market which allows for previous selling prices to go higher, from the client's point of view. This encourages him to offer an increased sale value on the previously contracted goods provided that the bank extends settlement maturity dates designated in the cheques of goods price payment. The repayment schedule identified in the cheques, may, if the bank wishes, cause

harm to the client and to his reputation from the legal point of view, particularly when the client is convinced that the future sale of this commodity is very promising signifying upward price trend. Accordingly, he opts to grant the bank, on his own volition, the advantage of increasing the previously agreed prices and that the mutual agreement on facilitating the client's proceedings is in line with the commercial system applied in the market. This is the intention of the bank's letter on which we require your opinion.

Answer:

The board has discussed the issue and would like to provide the following opinion:

First: Murabaha sale transaction is not like what has been explained in the bank's letter i.e. sale on suitable price. Instead, on Murabaha, the seller would sell the commodity on the actual price and cost, added to it whatever profit has been agreed with the buyer which is accepted by both parties. Thus, if the Murabaha sale has been conducted on

this ground, the bank would not be entitled to re-evaluate the sold commodity price.

Second: due to buyer delay to paying the price at the designated time because this method indicates that delay in settlement of debt was made in consideration of an interest which is prohibited (Haram).

Source:

Book of Fatwas of Shari'ah Board of Faisal Islamic Bank of Egypt, Fatwa No. (14).

(4-18) Buying and selling of a commodity already sold under Murabaha mode

Question (1)

A client has approached us to purchase a vehicle on credit Murabaha from a certain source. After we bought the car from the source and sold it to the client on credit, the client sold the car to some one and that later person came to us along with a promising buyer to sell the vehicle to the Kuwait Finance House. Having checked the transaction, it was clear that we would be buying a vehicle whose first owner is indebted to the Kuwait Finance House for this car.

The question is: Is it permissible to buy such a vehicle in this instance?

Answer:

It is permissible to buy a car from a client who has previously bought it from the Kuwait Finance House on credit and later on concluded Tawaroq transaction with a party other than the seller,

then it was offered to the first seller to buy it because it avoided Ayna sale. However, in order to avoid discrepancies and involvement of fictitious buyers, it is advisable that Kuwait Finance House refrains from such dealings so as to avoid evasive legal practices.

Source:

Kuwait Finance House, Book of Fatwas in Economic Issues, Parts (1), and (2), Fatwa No.(327).

Question (2):

We sell a car to a client. Due to his dire need to cash, we allow him to dispose of the car according to the procedures followed. He later on sells it to one of our suppliers (establishment), and that the supplier on his turn resells the car to the Kuwait Finance House. It is likely that such a process might be repeated with another client.

What is the Shari'ah opinion with regard to repetition of ownership of a single car by more than one client, selling and buying and not as debit transfer?

Answer:

Despite the fact that dealing on Tawaroq is allowed even if it ends up in the ownership of a single car by more than a client, and since this deal is carried out in modes other than Ayna where the seller buys in cash what he has previously sold for a higher value in credit, it is not permissible to deal in this method so as to avoid discrepancies and evasive as well as speculative practices.

Source:

Kuwait Finance House, Book of Fatwas on economic issues, Parts (1), and (2), Fatwa No.(339).

Question (3):

The bank buys certain goods and then sells them on Murabaha to a client and wishes to repurchase the same from this client to be sold on Murabaha to another client. Please provide the Shari'ah opinion with regard to this transaction.

Answer:

No objection to this issue in so far as Shariah conditions of Murabaha sale are honored in both cases. We have explained these conditions in other occasions earlier. The deal is not part of Ayna sale wherein the first client would sell the commodity on credit and buys it from him on immediate cash price lesser than the first price.

Muslim scholars agreed in the prohibition of Einah sale if intended to be on usury. The disagreement between the scholars happened to be on the accuracy of the contract from judicial view. The majority conceive that the contract is void for being a cover up of the prohibited usury. The thing which has to be considered in contracts is the intent behind it, there appeared to be a pretense for prohibited intention and illegal purpose, and such sale is an evidence of prohibited intent according to scholars opinion. Imam Al-Shafie and some other scholars opine that the contract is accurate judicially. They leave aside the prohibited intensions to be judged in the life hereafter. According to their views, evidences are not sufficient basis for judgment on contract nullification.

Source:

International Islamic Bank, Book of Fatwas Manual on Banking Transactions, Publisher, Movement of Islamic Economy, Fatwa No. (6).

(4-19) Buying and Selling of Lands without Registration

Question:

Kindly provide us with the Shari'ah opinion on the following issue:

First: A client has approached us requesting to buy land on Murabaha from the bank

Second: The bank would buy the land and register it on the bank's name at the registration department.

Third: The client buys the land on Murabaha from the bank as soon as the bank buys it, whereby the client would pay in cash part of the price and would pay the remaining part on monthly installments over different agreed terms according to promissory notes signed by the buyer.

Fourth: The buyer requests that the land remain registered under the bank's name to be waived in future in favour of either the client or some one else or alternatively the bank would grant the buyer an authorization to dispose of the land as he may wish.

Answer

In order for a Murabaha contract to be proper, the commodity must be sold to the buyer. Since the sale object in this case is a property whose ownership cannot be transferred to the other party, and its sale cannot be effected unless it is registered at the concerned department. Thus, unless such requirements are fulfilled, the client cannot be considered as a buyer and the bank will not be considered a seller. However it should only be deemed as an agreement on a sale contract, but such an agreement would not preclude the bank from entering into the contract if the price soared. Likewise, it wouldn't prevent the client from declining if the price goes down or for any other given reason. Therefore, in order for the Murabaha contract to be Shariah compatible, it is essential that the sale object be registered at the registration department on the name of the purchaser against the agreed price even if on credit.

With regard to the other part of the question wherein the client requested a waiver of the land to be effected in future in favour of the client himself or for other persons, such an arrangement would

make the contract inconsistent for not specifying the buying party. Also, with regard to his request that the bank awards the purchaser a proxy to dispose of as he may wish is inappropriate because the Murabaha contract is not fulfilled.

Source:

Jordan Islamic Bank for Finance and Investment, Book of Shariah Fatwas, Parts (1), and (2), Fatwa No. (28).

(4-20) The Price of a commodity bought by the bank

Question:

An accredited auto agency in Kuwait provides all suppliers, including those in the commercial sector, with Suburban automobiles for an amount of (…….. K Dinars). As there is an internal agreement between the Auto and the Murabaha sections that the Murabaha section is prohibited from buying automobiles from licensed agents thereby compelling the Murabaha section to buy the cars from a supplier at a higher price which is (……) pursuant to the consent of the promising buyer client. What is the Shari'ah opinion on this issue?

Answer:

There is no objection to Murabaha transaction on a commodity possessed by the Kuwait Finance House from an external party at a given price even If the Kuwait Finance House has a similar commodity at a lower price, but this method has an adverse impact. As such, if the promising buyer insists to follow that method, we shall request that we can not be involved in this dealing, and he

may be offered to buy a similar commodity whose cost to Kuwait Finance House is lesser so as to avoid moral precautions.

Source:

Kuwait Finance House, Book of Fatwas in economic issues, Parts (1), and (2), Fatwa No.(328).

(4-21) Ignorance of the commodity Specifications

Question:

What is the Shari'ah opinion regarding the purchase of goods to be sold to a promising buyer if the buyer is not aware of the goods detailed specifications such as buying a small factory or a printing press bearing in mind that the credit officer cannot be aware of all details of the goods which he will buy for the promising buyer?

Answer:

This type of sale depends on the description stated on the trade mark, catalogues, model, determination of exporter and its business position. The sold item is known, and if any discrepancy on the description was found, the buyer would have an option of description deficiency and hence it is entitled to reject the sold commodity and recover the price or reach a compromise on another price.

Source:

Kuwait Finance House, Book of Fatwas in economic issues, Parts (1), and (2), Fatwa No.(306).

(4-22) Purchase of Travel Tickets and selling them on Murabaha

Question:

Please look into the question raised by the commercial department concerning the purchase of travel tickets and selling them on Murabaha on credit through a draft agreement forwarded by the enquiring party?

Answer:

There is no objection, from Shari'ah point of view, to buy tickets and sell them on Murabaha subject to the following:

First: The commercial department would prepare a draft of the contract clarifying the relationship between the Kuwait Finance House and the Kuwaiti Airlines on how to execute this transaction with the clients. However, it is necessary to submit the contract to the Shariah board prior to its implementation.

Second: Enquire the commercial department about the method of executing this operation in conjunction with the clients.

Third: Present this proposal to the board.

Fourth: Dispatch these papers prior to commencement in line with this principle.

Source:

Kuwait Finance House, Book of Fatwas in Economic issues, Parts (1), and (2), Fatwa No.(310).

(4-23) Existence of damage, deficiency or otherwise

Question:

A client approached the Kuwait Finance House to purchase some goods for him, and Kuwait Finance House has purchased the goods. After possessing the goods and receiving the documents, a sale contract has been signed. When the client cleared the goods he discovered that they are defective.

- How could the damage be treated bearing in mind that the sale contract has been concluded on the assumption that the goods are complete/consistent.

- Is there any correlation between the Kuwait Finance House receiving a compensation from the insurance company or not, and settling the matter with the client considering that according to the contract the first installment becomes due after a week?

Answer:

According to Shari'ah opinion, in cases of partial damage to contracted goods, the value of the damaged commodities shall be deducted from the price according to the percentage between the complete price and the entire quantity of the contracted goods. There is no relationship between the sale contract signed with the client and the insurance agreement which has been concluded between the Kuwait Finance House and the insurance company as well as, whether or not compensation has been attained before or after negotiating with the client. There are in fact two independent transactions:

Such goods may not be sold on Murabaha since it is impossible to know its original price whereby the sold commodity may be rejected after having seen the damage based on the first price.

Source:

Kuwait Finance House, Book of Fatwas in economic issues, Parts (1), and (2), Fatwa No.(307).

(4-24) Relieving the exporter from defects found in goods

Question:

Is it permissible to enter into a sale contract with the promising buyer on damaged good that have been shipped on board a vessel provided that such damage is disclosed to the promising buyer prior to the contract or should the Kuwait Finance House relieve the exporter of the damages prior to the promising buyer relieves Kuwait Finance House before the contract is signed with him?

Answer:

There is no connection between the act of promising to buy and the contract signed with the exporter. Each one shall have its provisions applied in the light of the agreed terms with regard to claiming compensation against damages or rebating the claim. However, relieving the promising buyer of the damage liability shall only be considered at the time of executing the purchase contract with him.

Source:

Kuwait Finance House, Book of Fatwas in economic issues, Parts (1), and (2), Fatwa No.(62).

(4-25) Delay of goods arrival

Question:

Goods sale contract is frequently signed on Murabaha for which documentary credit facility has already been opened. Then, shipping documents are endorsed to the buyer after concluding the sale contract and obtaining the value by cheques to be matured in the future.

In some cases the goods may arrive at Kuwait Port long after the execution of the sale and after the maturity date of the first installment of the sale price.

We would like to know the Shari'ah opinion with regard to sale contracting and receiving the value prior to goods arrival in Kuwait.

Answer:

Receiving the value and delivering the goods are amongst the contract effects. There is no harm in delay of some effects by delaying the contracted parties consent as long as the contract is

concluded without any binding condition to delay the sold commodity delivery except in case of Salam which shall be bound by its conditions. It is permissible to speed up some effects by way of partial or total payment of price prior to goods arrival.

Source:

Kuwait Finance House, Book of Fatwas in economic issues, Parts (1), and (2), Fatwa No.(64).

(4-26) Conditions regarding installation of the Contracted Commodity

Question:

We purchase central air conditioning units from a seller who undertakes to bear cost of service of installation in the building. The value is paid to the seller in installments, whenever he installs or completes part of the work; we pay him an amount equivalent to the completed service. It should be noticed that the building where the equipment is installed is not the property of Kuwait Finance House; but it is the property of another party. This other party buys from the Kuwait Finance House the equipment on a profit margin and the equipment value is not registered on the buyer's side irrespective of the sale being in cash or credit until the equipment are installed in the building. Thus, the Kuwait Finance House is the buyer whereas the exporter is the seller based on a contract concluded between them. Similarly, there is another completely independent contract between the Kuwait Finance House and the building owner (buyer).

What is the Shariah permissible method to complete this transaction?

Answer:

Kuwait Finance House receives the request of the building owner and promises to sell him the equipment on Murabaha on condition of installation. The Kuwait Finance House buys the air conditioning units from the exporter according to specifications known by both parties on condition of installation whereas to Kuwait Finance House desires and agrees with the exporter on methods of payment according to agreed installation stages. The Kuwait Finance House installs the equipment in execution of the promise and the installed equipment is considered a trust lodged with the building owner. Later, a contract is signed between the Kuwait Finance House and the building owner according to the promise and the maturity schedule for price payment.

Source:

Kuwait Finance House, Book of Fatwas in economic issues, Parts (1), (2), Fatwa No.(86).

(5)

Murabaha Debt

(5 – 1) Default in Payment of Murabaha debt

Question (1):

Is it permissible to have compensation for damages resulting from the delay in payment of Murabaha installments?

Answer:

The Committee had been briefed on Fatwa issued by the majority in the Third Symposium of Al-Baraka held in Turkey regarding the permissibility of compensation. It also tackled the submitted questions and listened to the explanations of some of the directors of banks, where some members confirmed this Fatwa while the opinion of others is to reconsider the subject, then it has been decided to defer the matter for further research up to the coming symposium as well as the preparation of new researches regarding this subject.

Source:

Dallah Al-Barakah Group, Department of Development and Research, "Book of Fatwas In Economics" Al-Barakah Fifth Symposium, Fatwa No. (4).

Question (2):

What are Shariah modes that may be applied in dealing with banks' customers who default in payment of installments of Murabaha at their due dates?

Answer:

The answer to your question on the above subject can be summed up in that the dealers with the bank through Murabaha, default in payment of their debts when they are due, and that this may be intended for the reasons you mentioned and not as the result of force majeure that prevented them from paying. You requested us to provide you with the Shariah view of the methods that would ensure the preservation of the legitimate rights of the bank, our advice is as follows:

First: Further to our earlier discussion, it is advisable to adopt a policy that would reduce the volume of transactions through the Murabaha dealings as a prelude to abandon it completely at suitable time.

Second: Instead of buying and selling goods in Murabaha with a deferred payment of price, which may result in those risks you have mentioned, the goods should be kept in possession of the bank at bank-owned stores and to provide the dealer with irrevocable authorization, for a given period of time, to sell the goods at a specified price that includes the suitable margin of profit to be set forth by the bank, in the light of market conditions. Provided that, any amount in excess of this offer should be credited to the sales agent as a commission or remuneration, based on the fact that agency against remuneration is Shariah permissible. Yet, whereas such remuneration is calculated as a certain percentage of the sales price, profit, or the value in excess of the price to be determined by the principal, hence it has been approved by a variety of scholars of the Sahaba and followers as

stated in the books of "Fath Al-Bari" and "Omdat Al-Qarii" Sharh Sahih Al-Bukhari, as well as in other books of comparative Figh. This method has many advantages such as:

(A) It is not a financing transaction, as purchase is conducted in the name of the bank, and the goods are sold for its account through the agent. This procedure enables to avoid the restrictions imposed by the Central Bank such as requirements for credit guarantees and the limit set for the amount to be awarded to each customer.

(B) This method ensures the rights of the bank, since the release of the goods can only be conducted after paying for them, or after ensuring the solvency and trustworthy of the client.

(C) In case of appropriate awareness and proper explanation of this method, many of the customers will prefer it as it achieves for them the required profit

margin as well as free them from the market risks. If it has been argued that this will be detrimental to the interests of the bank as it transfers same risks to the bank, we argue that this is in particular is also found in (Mudaraba). Any how this method may be used in the first instance as an alternative for Murabaha transactions in some cases, and for particular customers. However, in this case, guarantees may also be taken from the authorized agent who is in charge of sale against amounts under his liability which he might usurp. Hereunder is the explanation of "Al-Bukhari" of this method:

It has been stated in the book of "Fath Al-Bari Sharh Sahih Al-Bukhari": 357 that "Ibn Abbas" said: "it doesn't matter to say: "Sell this garment, and if you got more than the hereto specified amount it would be yours". Further more "Ibn Sirin" argued that: No objection to say: "sell this item at X price and any profit obtained thereof is yours or (Fifty-fifty)". Our

Prophet said: "Muslims abide by their terms and conditions". The explanation showed that some scholars interpreted the permissibility of "Ibn Abbas" as a wage that resembles loan grantor. This opinion has been confirmed by Ahmed and Isehaq besides what is said by "Ibn Sirin" which resembles a case of loan guarantor rather than broker.

Third: Some goods might be sold in Murabaha transactions provided that such goods should be mortgaged against their price or otherwise sale transaction automatically be cancelled in case of non-payment of installments and the goods be returned to the bank.

Fourth: taking necessary measures to make the compensation condition effective. We have shown in a previous note the permissibility of compensation and its Figh basis as well as the elements of compensation and the way to collect it.

Source:

International Islamic Bank, "Book of Shari'ah Fatwas on Banking Transactions", Publisher, Movement of Islamic Economy, Fatwa No. (4).

Question (3):

Is it permissible to terminate the arrears of Murabaha debt?

Answer:

First: If the buyer did not pay the due debts in Murabaha at due date then the bank is entitled to purchase the item that has been sold to the client under Murabaha or any part of it at an immediate price to be receivable from the Bank, if a period of time has passed after the sale of Murabaha during which prices typically vary depending on the commodity, (this is the so-called by scholars markets' assignment). However, this should not be considered as prohibited Ayna sale. With this purchase the bank could satisfy its debt, in whole or in

part, by clearing between debt and what is due to the client from the bank.

Second: The bank then has the right to dispose of the goods or equipment or assets purchased from the customer as it deems the best to achieve its interests either with the same customer or others in accordance with Shariah permissible modes, such as Musharakah or Mudharabah based on their own requirements and conditions or through normal rent or lease ending in ownership provided that the bank should not resale them in credit to the customer at a price more than the price of purchasing, since this is considered as reversal of Ayna sale which is called (exchanging of debt with another debt), which is Shariah prohibited.

Third: It is impermissible to reschedule the debts of Murabaha or other debts by increasing the amount and the term of debt.

Source:

Dallah Al-Barakah Group, Development and Research Department, Resolutions & Recommendations of AlBaraka Symposia on the Islamic Economy, (The First, Second and Third Seminar), fatwa No. (5).

(5-2) Advancing Installments

Question (1):

The bank intends to enter into a contract of Murabaha transaction with a client who desires to settle down the payment before the credit mature date... Is it permissible for the bank to make any discount from the specified amount?

Answer:

This discount is permissible provided that the customer should not stipulate such a discount as a condition if he advances payment as well as it should not have an oral or written correlation with the contract or after it, but must be at the discretion of the creditor only, i.e. without any oral or written condition.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (99).

Question (2):

Is it possible to deduct a certain percentage out of the profit taken from the customer upon completion of the sale contract by the end of the term if the customer withdraws the goods and settled down the payment of the price prior to the end of the year. i.e. the return of a percentage of 1% or 2% of the profit as a gift (Hiba) or reward or the like as we took the value of the full year profit despite the fact that the duration of settlement is less than one year?

Answer:

- From the Shari'ah perspective: it is permissible to discount a portion of the profit for those who paid before the end of the term if there is no any prior oral or written agreement.

- From an administrative point of view: it is preferable not to do so in order to avoid defaming the reputation of Kuwait Finance House and this should rather be replaced by reducing the rate of profit in a following transaction.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (316).

Question (3):

Is it permissible for the bank to accept the repayment of indebtedness of customers before their maturity dates?

Answer:

The board opined that the bank may accept payment of the indebtedness of customers in Murabaha trading transactions before the due date of the installments, whether in whole or in part, against a waiver from the bank of some of its agreed upon profits provided that it should not be stipulated in advance at the time of contracting.

Source:

Fatwas of the Shari'ah Board of Qatar Islamic Bank, Fatwa No. (11).

Question (4):

The Bank entered into Murabaha transaction with a customer whereby it sold him a truck at an amount of 78 thousand pounds with a margin of profit amount to 14.040 pounds to be reimbursed over a period of 15 months, however, the customer offered to pay 28 thousand pounds, and wishes to pay all of it at once and requests from the Bank to calculate the profit based on the remaining indebtedness amount, hence is the Bank obligated to reduce its margin of profit?

Answer:

The bank is not from Shariah perspective or legally obliged to accept the offer made by the buyer, yet the Prophet calls for good treatment in such circumstances.

The Prophet (PBUH) said: " May Allah's Mercy be upon him who is lenient in his buying, selling and in demanding back his money." Hence, in order for the bank to deal in good and noble manners, it is better to consider this case because the theory which permits increasing the price in case of selling on credit is based on the fact that the seller has left his money for longer time in the hands of the buyer than on the spot selling and collection of price whereby he misses what could be accrued to the price if paid on the spot, therefore the Board recommends to observe this situation and reduce the margin of profit.

Source:

Shari'ah Board, "Fatwas ", Islamic Bank of Western Sudan, Fatwah No. (20).

Question (5):

Is it Shariah permissible to grant dealers with the bank some prizes if they paid their installments of the Murabaha before the maturity date without affecting the profit of the bank in the whole transaction?

Answer:

First: The prize of earlier payment is considered as waiver of a portion of the debt in return of its settlement before the maturity date. This is well-known in books of Islamic Figh as the rule of (Give discount and receive soon) i.e. waiver a part of the debt and accelerate the payment before the maturity date.

Second: There is no disagreement between scholars about the permissibility of paying the debt before the maturity date upon the consent of the creditor and the debtor and the permissibility for the creditor to unconditionally waiver a portion of the debt to the debtor who paid the debt before the maturity date because it is not usury and does not contain any suspicion of usury. According to Majallat AlAhkam AlShariah", article (753), it is permissible for the debtor to pay more or less of his debt based on mutual consent or to increase or decrease in the amount or character without prior conditions or arrangement.

Third: As for the agreement between the creditor and the debtor (with a deferred debt) to repay the debt before its maturity date provided that the creditor write-off part of the debt, which is called (Give discount and receive soon) rule and the prize of earlier payment. This subject is one of the controversial issues among jurists. Nevertheless it has been mentioned at the start of the book of " Bidiat AL-Mojtahid" by "Ibn Rushd": P105, Second, that the Rule of (Give discount and receive soon) had been accepted by "Ibn Abbas" who is one of the Prophet's (PBUH) companions as well as some other jurists . It is also prohibited according to some others such as Ibn Omar (A Prophet's (PBUH) companion), Malik, Abu Hanifa, Al-Thawri and some other scholars. However, El Shafei opinion regarding this matter was different, whereas Imam Malik held it permissible. The view of those who deny the rule, is based on the fact that the debtor is paying earlier to obtain a write-off of a part of the debt and that is similar to increase the time and get more interest which is unanimously prohibited, hence the similarity is the

allocation to time part of the price in both cases. That is to say when time is increased or decreased the amount is relatively increased or decreased. Whereas the view of those who allow this arrangement is based on the Prophet saying (Hadith) which has been reported by Ibn Abbas that when tribe of "Banu Nadir" were banished from Madinah some of those people came to the Prophet (PBUH) and said "You have ordered to expel us, but some people owe us some debt which have not yet matured." Thereupon the Prophet (PBUH) said to them: (Give discount and receive soon). So the controversy is due to opposition of resemblance to this Hadith. According to the book of "Al-Moghni" by Ibn Kaddamah: (39): “If somebody had some deferred debt, and said to his creditor: "make discount out of it and I pay you the balance on the spot “ , which is not permissible. It has been disliked by Zaid Bin Thabit, Omar Ibn Al-Miqdad, Saeed Bin Mussayeb, Salem, Hammad, Al-Hassan, El Shafei, Malik, Haitham, Al-Thawri, Ibn ALiyah, Isaac and Abu Hanifa. Based on this prohibition, Al-Mekdad warned two men who practiced such action:

that both of them will face war from Allah and his messenger, whereas it had been reported by Ibin Abbas that it is acceptable to use such method as well as supported by Al-Nakhai and Abi-Thour who see there is no objection thereupon as the seller just take some of his due amount and leave the other hence it is permissible as if the debt is promptly paid. Al-Khargi also reported that: It is all right to make a discount against earlier payment, it is just like a creditor says to the debtor I give you ten Dirhams if you paid earlier the 100 Dirhams you owe to me.

Our opinion is as follows:

First: No objection for investment sector to make a specific discount for that debtor who paid earlier before the maturity date without prior agreement from the customer.

Second: That there is no objection for the sector to propose a general policy to be applied in all cases of earlier settlement of payment without concluding any agreement

with the client thereon, as well as there is no objection for the clients to be aware of this policy in advance, without being a party in setting it or requesting them to accept it.

Third: However, in special cases in which the interest of the bank is to collect its debts before the maturity date from some customers who deny that without being given specific discount then it is admissible to agree with the customer on this award on personal basis in accordance with the opinion of Ibn Abbas, Al-Nakhaai and Abi Thor; although majority of jurists are against this opinion because it is a controversial issue as it opposes the text of Hadith and due to the suspicion resemblance (as previously discussed).

Fourth: We hope to see the arrangement to be set by the sector prior to the start of its implementation.

Source:

International Islamic Bank, "Book of Shari'ah Fatwas on Banking Transactions", Publisher, Movement of Islamic Economy, Fatwa No. (5).

(5 – 3) The Condition of Delay Penalty

Question:

Please provide Shari'ah opinion about the following:

A bank client has submitted his application to purchase a house in the amount of 250.000 pounds provided that the bank sell same property to the client in form of Murabaha in the amount of 265.000 pounds to be paid by the client after one month as of the date of the sale of the bank's property to the client. The client may mortgage same to the bank until he settles down the value of the property?

Answer

The application contains two aspects: a promise to purchase and selling in Murabaha mode. This is the correct interpretation of the application text, as the applicant promised to buy the property, in mode of Murabaha from the bank and asked the bank to purchase the house from its current owner at value of 250.000 pounds provided that the promising buyer will pay an amount of 265.000

pounds, as a price of the property, after three months from the date of sale of the house.

Promise to purchase is permissible and subsequently binding the promising buyer according to the following details. Selling in Murabaha mode is permissible and the above mentioned profit albeit inconsiderable relative to the value of the house, it is also Shariah permissible, as well as the board see the permissibility of the promise to purchase based on sayings of jurists, which are summarized as follows:

First: Promise is not binding.

Second: Promise, in view of Maliki Jurists, would be binding, if the promising reason has been specified.

Third: Promise, based on the view Asbagh, a Maliki Jurist and Ibn Shibrimah one of the Mugtahideen, is absolutely binding.

Fourth: The conferees, including the representatives of the Islamic banks, discussed the subject of promise to purchase and

left to the Islamic banks to choose what it deems binding or non-binding to promising buyer.

The board is applying in its current Shari'ah opinion, and persists in its future advisory opinions on binding the promising buyer to consummate the purchase after the arrival of the commodity and to give him the right of option, provided that he has to pay all expenses incurred due to his promise or all costs that the bank would not have incurred if not being promised.

Accordingly it is permissible for the bank to buy the house at amount of 250.000 pounds based on a promise from Mr. Ali Mohamed Al-Hassan AbdulSalam and that the bank to sell to him the house at a profit of 17.000 pounds and settle the amount after a maximum period of three months from the date of sale.

This Transaction is Shariah permissible with the following notes:

(1) We have approved the Form of Promise to Purchase, which contains clauses that stipulates the approval of the promising buyer to pay a certain percentage of the value as collateral to prove his seriousness in execution of his

obligation. We hereby attract the attention to the sixth paragraph of the Form and we leave to the Bank to apply it in accordance with the confidence of the Bank in the client.

(2) We have noticed in the draft agreement, regarding the terms and conditions of the purchase of the house by the bank and commitment of the promising buyer to buy, that the sixth paragraph set forth a penalty condition that enjoins on the buyer to pay an amount of five thousand pounds for each month elapses after the end of the period specified to purchase the house, this condition is not permissible in such an agreement because it includes an increase to the amount which binds the buyer and already is agreed upon as well as it is of the same kind of the debt and increases in accordance with the length of delay period in which the client has not settled the required amount, hence such increment falls within the prohibited usury. So we do not agree with the existence of paragraph (6) in the agreement that contains this clause.

We prefer to replace the paragraph with a text in which the bank is entitled to sell the house to who ever wishes to buy it as well as the promising buyer has to bear any differences, expenses or decrease in value caused by his promise to purchase, according to which the bank entered into the given transaction.

Source:

Resolutions of the Shari'ah Board of Islamic Bank of Sudan, Question No. (28).

(5–4) Long Delay of payment after the Date of Selling the Goods

Question:

A client requested to engage with the bank in a transaction of Murabaha to import fabrics for both sexes provided it pays the value over a period of three years whereas the sale of these goods will be executed within (3-6 months) only?

Answer:

There is no objection from Shari'ah point of view to be engaged in such transactions and that the decision is up to the management of the bank in terms of studying the market conditions, availability of liquidity, the possibility of financing and the applicable terms for payment in such cases.

Source:

Fatwas of the Shari'ah Board of Qatar Islamic Bank, Fatwa No. (20).

(5–5) Deferred Installments Paid in Foreign Currency and Determination of Exchange Rate on the date of Arrival of Documents

Question (1):

Is it permissible for the Islamic Bank to conclude an agreement with its client in order to pay the debt of Murabaha in another currency at the rate prevailing on maturity date?

Answer:

Based on the evidence presented by the Director of the Bank who submitted this question and stated that the selling will be conducted in a foreign currency and the client is obliged to pay in the same currency, hence the payment of this obligation on the maturity date at a value equivalent to the local currency according to the exchange rate prevailing thereat would be permitted and no objection from the standpoint of Shari'ah perspective because it is purely an offset between the due debt that is fixed and (constructively possessed) in foreign currency and the local

currency in which the debt which would be received at the time of exchange at current rate.

Source:

Dalah Al-Barakah, Department of Development and Research, Resolutions & Recommendations of AlBaraka Symposia on the Islamic Economy, Al-Barakah First Symposium, fatwa No. (5).

Question (2):

Some clients request from the bank to purchase, in mode of Murabaha, some goods imported under documentary credits; provided the Bank pay the price of the goods under scheduled time drawdowns in foreign currencies (dollar or sterling pound, for example) after the period of time agreed upon with the seller (three months or six months, for example) as of the date of receipt of the documents by the bank.

Please advise the Shari'ah point of view on the permissibility of selling the goods in Murabaha to the purchase orderer for which the bank agrees with the seller to pay the price thereafter in dollar

or sterling. Hence the bank wants to agree with the purchase orderer to specify the price of the goods (the value of the documents) in foreign currency upon the arrival of the documents to the bank as well as to increase the agreed upon profit.

Answer:

Regarding the Shari'ah opinion on the sale of goods in mode of Murabaha to the purchase orderer whereas the Bank agreed with the seller (the exporting company) to pay its value deferred thereafter in dollars or sterling pounds in accordance with the prevailing rate thereat upon the maturity date. The bank wants to agree with the purchase orderer to determine the price according to the value of the foreign currency on the arrival of the documents … etc, and based on the fact that the sale of Murabaha in order to be valid requires that the seller and the buyer upon conclusion of the contract have to know the capital / price and the profit, and that each of them has to know the resulting cost, if any, and that in this case neither the seller (the Bank), nor the buyer (the purchase orderer), at the time of making the contract of Murabaha sale, know specifically the real price, and both of them do not know the

specific value of the Murabaha as well as the cost of goods. All of this embodies an ambiguity that voids the validity of the contract, and make it subject to controversy and conflict, because of the increase or decrease of the value of the foreign currency; therefore the contract, as contained in the question is Shariah invalid. The knowledge of the purchase orderer that the purchase price is deferred will not change this position because it is undefined.

Source:

Jordan Islamic Bank for Finance and Investment, Book of Fatwas, Parts (1), (2), Fatwa No. (34).

(5-6) Solutions to settle the Murabaha Debt

Question (1):

Some clients often are delinquent in the payment of installments of the Murabaha, the value of the Murabaha rate for such clients may be 9% and due to repeated delinquency in payments we want to increase the rate of Murabaha in future deals. Is it Shariah permissible?.

Considering that no increase in the price of Murabaha would be effected if those clients were committed to paying on time?

Answer:

There is no objection in terms of Shariah opinion to request more profit upon conclusion of a new contract with the client who had delayed in payment of a previous Murabaha transaction, without specification of the details of the increase in the amount and without any written or oral agreement regarding such action because the subject matter is the mutual consent to be reached on

the amount of new profit (without consideration of the elements of specifying profit for each contractor).

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (111).

Question (2):

Is it permissible to terminate the arrears of Murabaha debt?

Answer:

First: If the buyer did not pay the due debt in pursuant of the Murabaha transaction at due date then the bank is permitted to purchase the item that it has sold to him under the Murabaha or any part of it at a current price to be receivable by the Bank, if a period of time has passed after the sale of Murabaha as prices typically vary depending on the commodity, (this is the so-called by scholars markets' assignment). However, this should not be considered as prohibited Ayna. With this purchase the bank could satisfy

its debt, in whole or in part, by clearing between debt and what deserved to the client from the Bank.

Second: The bank then has the right to dispose of the goods or equipment or assets purchased from the customer as it deems the best to achieve its interests either with the same the customer or others in accordance with Shariah permissible modes, such as Musharaka (Partnership) Mudharaba based on their own requirements and conditions or through normal rent or lease ending in ownership provided that the bank should not resale them in credit to the customer at a price more than the price of purchasing, since this is considered as reversal of Ayna that is called (exchanging of debt with another debt), which is Shariah prohibited.

Third: It is impermissible to reschedule the debts of Murabaha or other debts by increasing the amount and the term of debt.

Source:

Dallah Al-Barakah Group, Development and Research Department, Resolutions & Recommendations of AlBaraka Symposia on the Islamic Economy, (The First, Second and Third Seminar), fatwa No. (5).

(6)

Rules of Promise to Purchase and sell in Murabaha

(6.1) The binding nature of promise

Resolution:

Having taken cognizance of the papers presented by members and experts in the subject of Murabaha Sale for purchase orderer and after listening to discussions about the subject, it has been decided that:

First: Promise (issued by the purchase orderer or the ordering entity unilaterally): would be binding to the promisor according to Shari'ah Fatwas, unless there is an acceptable excuse with respect to this matter. However, it would be enforceable judicially, if it is tied up to certain cause and if the promise has caused the promissor to incur some expenses, the effect of binding in this case is determined either by fulfilling the promise or paying a compensation for the damages incurred thereby due to non-fulfillment of the promise without any reason.

Second: In case of promise (the promise is made by both parties): it is permissible to execute a Murabaha sale, provided that

option in such case is offered for each or both of the promising parties. However, if option is not offered, then Murabaha sale is impermissible because binding promise in Murabaha sale is similar to selling itself whereby the seller should take possession of the sold object to avoid violation to Shari'ah rule of sale as the Prophet forbade the selling of things not possessed by the seller.

Source:

Organization of Islamic Conference (OIC), Resolutions and Recommendations of the Council of the Islamic Figh Academy, First, Second and Fifth Sessions, Resolution No. (2 and 3).

Question (1):

You are kindly requested to provide the Shari'ah opinion regarding the permissibility in case we purchased commodities and goods, in cash, based on a promise by a client that he is ready, if we received the commodities, to purchase them from us on credit basis at a price higher than their cash price. For instance:

A client is in need of purchasing specific commodity or goods that he can not pay their price in cash, yet we believed that, if we purchased and possessed the same, he shall purchase it on credit basis against a specific profit as referred to in his previously stated promise?

Answer:

The statement made by the purchase orderer is a promise and the Islamic main Jurists (Imams) were of different opinions with regard to whether this promise is binding or not.

Hence I advocate the opinion of "Ibn Shibrimah" who said:" Any binding promise that does not allow what is prohibited and

prohibits what is permissible is a Shari'ah binding promise and enforceable through courts. This opinion is supported by the interpretation and explanation of texts of Quran and Hadith. In fact the adoption of this opinion is simple for people and applicable and helps control the transactions. Hence there is no objection to execute such a condition.

Source:

Kuwait Finance House, Book of , Fatwas on Economic Issues, part (1), and (2), Fatwa No. (2).

Question (2):

What is the Shariah opinion if Kuwait Finance House requires to purchase a crop, or metal other than Gold and Silver or any other raw material that is actually possessed by the seller, who specified a maximum period of time to receive the goods; provided that Kuwait Finance House is entitled to receive the goods at any time during this period. Kuwait Finance House paid an amount of money to the seller as an earnest money (Urbun) and promised to pay the remaining amount upon delivery.

Is this transaction permissible? and is it permissible for Kuwait Finance House to sell such goods? and when?

Answer:

This purchase transaction (which is called (Purchase on earnest money "Urbun") is correct, it is permissible for Kuwait Finance House to directly or indirectly sell these goods after taking the full possession of the same, otherwise it is impermissible to sell them.

Source:

Kuwait Finance House, Book of , Fatwas on Economic Issues, part (1), and (2), Fatwa No. (4).

Question (3):

Is it permissible for us to purchase a specific commodity based on a promise from a client who will purchase it on credit at a price higher than the purchase value?

- Are we allowed to take earnest money (Urbun) from this client?

- If we purchased the commodity while the client declined to purchase it from us, is it permissible for us to confiscate the earnest money paid to us?

Answer:

First: Regarding the promise made by a client to purchase a specific commodity to be sold to him on credit at a price higher than the original purchase price, I say that: all general texts of Shariah stipulate that all Muslims have to fulfill and abide by their contracts and promises, unless they allow what is prohibitd and prohibits what is permissible. However, all main Islamic jurists (Imams) see that the fulfillment of a promise is obligatory although it is not forcible by courts in accordance with the opinions of the three Emams (Jurists): Abi Hanifah, Al Shafei and Ahmed. Nevertheless, Emam Malik has stated three scenarios which are:

1. Promise should not be fulfilled.

2. Promise should be fulfilled absolutely.

3. If Promise has resulted in a commitment inflieted on the promisee that he would not had been bound to it unless he is promised, in such case it would be binding.

Hence the question falls within the last scenario. I support this opinion as fulfillment of a promise is a major feature of the believer whereas backing out is a distinctive feature of hypocrites.

Second and Third: Taking earnest money from such client is Shari'ah permissible and if he did not fulfill his promise the earnest money may be seized, If this condition is stipulated in the contract.

Source:

Kuwait Finance House, Book of , Fatwas on Economic Issues, parts (1), and (2), Fatwa No. (5).

Question (4):

A client approached us to purchase specific goods and promised to repurchase them on credit. We actually arranged shipment of the required goods. Before the arrival of the goods we have been informed that this client is insolvent as well as indebted for much money and he has been put under liquidation by court. Are we obliged to execute our promise, and deliver the goods to same client and be included within the procedures of the liquidation? Or shall we hold back our promise to reserve our rights?

On the other hand if we concluded a sale contract with this client and sold him the goods and then we are informed of his insolvency, shall we deliver him the goods in such case or not?

Answer:

Promise, according to the opinion of jurists, is not enforceable through courts. Yet, to safeguard the funds of shareholders and depositors the goods should not be delivered to this client. However if a contract of sale is concluded and before the delivery of goods and knowing the insolvency of the client, goods shall not

be handed over to him because the seller has the priority to regain his rights over other debtors, so that the asset which is sold to the client shall be retained due to the insolvency of the purchaser.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, parts (1), and (2), Fatwa No. (140).

Question (5):

A client approached the bank to purchase a specific commodity that he identifies its full description and agrees with the bank on the purchase price by the bank and repurchase price offered by the customer after adding the agreed upon margin of profit ?.

What is the opinion regarding this transaction?

Answer:

The conference is of the view that this transaction implies a promise by the client of the bank to purchase the commodity in accordance with the specified provisions and another promise by

the bank to complete the selling after the purchase according to the same conditions.

This promise, according to the Fatwas of Malki school of jurisprudence, is enforceable by law while other schools of Figh see that it is Shari'ah binding. What is Shariah compatible, can be enforced by law, if it is necessity and if it is possible for the courts to intervene.

The wording of contracts in such transactions need Shari'ah technical accuracy, and might need the issuance of law (Act) in Islamic countries, to make them enforceable through courts.

Source:

Recommendations and Resolutions of the first conference of Islamic banks, Fatwa No. (8).

Recommendation:

The conference acknowledges that promising in Murabaha sale for the purchase orderer, after taking possession of the purchased commodity and reselling it to same party at the price mentioned in

the previous promise, is Shariah permissible as far as the bank is responsible, prior to delivery, for the damages and the risk of rejection due to unseen defects. Whereas for the binding nature of the promise to the purchase orderer or the bank or both of them collectively, it is better for the benefit of the transactions and dealings, to adopt the opinion of binding nature as it observes the interests of the bank and the client. In fact, the binding nature is Shari'ah acceptable and any bank has the option to adopt it or leave it in accordance with the decision taken by its own Shari'ah board.

Source:

Recommendations & Resolutions of the first conference of Islamic banks, Fatwa No.6

Question (6):

Is it permissible to hold the promise by the purchase orderer binding in Murabaha transaction?

Answer:

According to resolution No (2) issued by Islamic Figh Academy in its fifth session held in Jeddah regarding Murabaha sale for the purchase orderer, it has been forbidden to hold the promise by both parties as binding without giving either of them the right of option because it will be similar to the action of selling itself. Hence the Committee sees that the party who deserves to be given the option, to avoid binding promise by both parties, is the purchase orderer. Hence, banks should adopt the opinion of not binding the purchase orderer or any party.

Source:

Dallah Al-Barakah Group, Development and Research Department, Resolutions & Recommendations of Al-Baraka Symposia on the Islamic economy, (First, second and third seminar),Fatwa No.12

(6.2) Amending conditions of purchase promise

Question (1):

Is it permissible, before the arrival of the goods and submission of the documents to the correspondent bank abroad, to change the sale price and payment maturity date of goods that we have promised to sell to a client in a Murabaha transaction by a documentary credit?

Answer:

If the sale contract is not concluded by both parties as well as both of them agreed to cancel the previous promise to purchase and enter into a new promise with new mutually agreed upon terms, there is no objection to make the required amendments as Muslims ought to fulfill their promises.

Source:

Fatwas of shari'ah Board of Qatar Islamic Bank, Fatwa No. (28).

Question (2):

Is it allowed to change the conditions of the mutual promise upon conclusion of Murabaha contract?

Answer:

There is no objection for the bank and the purchase ordere to agree to change the term and conditions of the mutual promise upon conclusion of the Murabaha contract.

Neither of the two parties (with regard to tenure, profit ..etc.) has the exclusive right to unilaterally change the conditions of the mutual promise even if he has the option to withdraw from the promise. Therefore in such a case the extension of the term duration with the increase in profit, does not fall within the realm of debt rescheduling, which is Shariah prohibited.

Source:

Dallah Al-Barakah Group, Development and Research Department, Resolutions & Recommendations of AlBaraka

Symposia on the Islamic Economy, (First, Second and Third Seminar), Fatwa No. (9).

(6.3) Payment of part of the commodity price at promising time:

Question:

Is it permissible for the purchase orderer to pay part of the price at promising date?

Answer:

It is permissible for the purchase orderer to pay part of the price to be part of the sale value if the sale contract is concluded, provided that such paid amount must be returned in whole to the purchase orderer if sale transaction is not completed.

Source:

Dallah Al-Barakah Group, Development and Research Department, Resolutions & Recommendations of AlBaraka Symposia on the Islamic Economy, (First, Second and Third Seminar), Fatwa No. (10).

(7)

Unauthorization (Fedalah) in Murabaha

(7.1) Unauthorization (Fedalah) in Murabaha Transactions

Question (1):

Is it permissible in Shari'ah rules for a client to purchase for himself and others by way of intrusion (Fedalah)?

Answer:

Based on the information provided by the person following up the transaction that the party who ordered Murabaha financing has already expressed his desire to purchase a vehicle through the company considering that he will submit his application to "Al-Barakah Company" before entering into a contract with the vehicle manufacturing company and before paying it the advance payment. Thence submitted his application to "Al-Barakah Company" in order to enter into the transaction with the remaining percentage of share which he did not pay yet. Based on the above mentioned information the behaviour of the client in conclusion of the purchase contract is of a dual capacity: as he purchased 10% of the vehicle value in behalf of himself and 90% as an unauthorized person (Al-Fodoli) in behalf of the company, i.e. on the basis of the

unauthorized person's purchase (Shiraa Al-Fedoli), This type of disposition depends on the decision and approval of the other party (on behalf of whom the purchase is made) if he approved this act, then it will be valid, hence the Company is free to accept or reject it. In case of approval the Company will own 90% of the vehicle and is obliged to pay its share in price, thereby the partnership of the vehicle (which is Shirkat –Ul-Milk) is executed between the Company and the client. Should the two parties agreed to sell the vehicle then the profit shall be divided between them on pro rata basis, after each party returned its capital, also loss shall be distributed between them on pro rata basis. However, each party is entitled to sell his share to the other party in Murabaha mode or in normal sale or lease it, a lease that end into ownership. The selling of the share can be at once or in partial basis (Diminishing Partnership). This principle is applicable within the minimum extent. It is not a general principle, as it is based on the intent which is hidden and can not be verified.

Source:

Dallah Al-Barakah Group, Development and Research Department, " Book of Shari'ah Fatwas and Answers in Banking Applications", part (1), Fatwa No. (62).

Question (2):

A businessman approached Kuwait Finance House to purchase specific type of vehicles from a supplier in Kuwait and promised to repurchase them from Kuwait Finance House. He got the initial approval from Kuwait Finance House. Then he himself went to the supplier and received the agreed upon vehicles without obtaining an order issued by Kuwait Finance House to the supplier. Is it permissible for the Kuwait Finance House to sell the vehicles to this businessman, considering that the businessman is a client of the Kuwait Finance House who is regularly dealing with it in such transactions?

Answer:

The behaviour of receiving the vehicles by the client is of the type of behaviour of unauthorized person (Fedoli) and the Kuwait Finance House is allowed to accept it as far as later permission is like a prior agency, particularly that this businessman is a regular dealer of Kuwait Finance House in such transactions, as well as he has already got the initial approval to this transaction. Hence, upon the acceptance of Kuwait Finance House of this behaviour, the other normal procedures regarding this transaction should be completed.

Source:

Kuwait Finance House, Book of Fatwas on economic issues, part (1), and (2), Fatwa No. (17).

Question (3):

Is it allowable for a client, based on the approval of Kuwait Finance House, to directly purchase and ship goods from the exporter under the name of Kuwait Finance House?

Answer:

It is permissible, provided that Kuwait Finance House accepts such behaviour from this unauthorized (Fedoli) client.

However, the client by this behaviour is considered as an agent. Hence, the sale is concluded for the benfit of Kuwait Finance House since later permission is considered like prior agency.

Source:

Kuwait Finance House, Book of Fatwas on economic issues, part 1 and 2, Fatwa No. 24.

(8)

Provisions of Profit in Murabaha Transactions

(8.1) Achieved profit for each year

Question (1):

Please provide the Shari'ah opinion regarding realizing profits in Murabaha sales transactions for the purchase orderer and profit of each fiscal year.

Since Murabaha sales, to the purchase orderer, are executed in the bank on the basis of payment obligations by the clients within periods ranging between (3) months to (24) months, in return for a percentage of profits to be obtained by the bank in direct proportion with the length of the repayment period.

Currently the bank calculates the whole profit at contracting following the conclusion of Murabaha sale with the customer. The profit is calculated and recorded in a separate account.

Hereunder a practical hypothetical example:

a) On 31/ 03/1980 a client approached the bank to purchase him goods through Murabaha.

b) On 30/04/1980 the documents of the same goods were received and delivered to the client. The cost of these goods amounted to (2400) Jordanian Dinars. On the same date the subsequent contract had been concluded and the sale transaction had been completed on installments to be paid over (24) months. The bank obtained a profit rate of 10% (240 JD) and the goods were sold in the amount of (2640 JD).

The amount of (2640 JD) had been divided into (24) equal installments to be paid monthly. The first installment was due on 31 / 05 / 1980 and the last installment on 30/04/1982.

On 30/04/1980 (the date of subsequent contracting) the amount of profit (which is 240 JD had been recorded to the bank investment revenues account.

Please provide the Shari'ah opinion regarding the following points:

- Are the profits shown in the example above (that amount to 240 JD) considered profits achieved in 1980 only?

- Or should those profits be distributed to match installments which the buyer is bound to repay and thus be distributed among the years: 1980, 1981, 1982 as follows:

    1) (80) Dinars as profits of 1980.

    2) (120) Dinars as profits of 1981.

    3) (40) Dinars as profits of 1982.

Please kindly provide the Shari'ah opinion on the above mentioned matter, so that the bank can implement Shari'ah compliant financial procedures prior to the end of the current fiscal year?

Answer:

The answer to this question is related to paragraph (C) of Article (19) of the Code of the Islamic Bank of Jordan (No. 13) for the year 1978 as well as related to the understanding of Figh texts stipulated in the chapter of Murabaha in Shari'ah references.

Whereas Paragraph (C) provides that the profit of Murabaha is achieved at subsequent contracting. However, subsequent

contracting means the contract is entered into by and between the two parties after the execution of the first contract which is related to the achievement of the desire of the purchase orderer.

Figh texts indicate that the transaction contains two contracts: the first contract concerns selling of the subject matter possessed by the Second Party according to the cost plus a profit basis, whereas the second contract concerns the purchase of the item ordered by the purchase orderer, and in the latter contract an agreement will be made to pay the price in cash or deferred. In the case of defer if the buyer paid the agreed upon price or on installments before the maturity date he is entitled to recover from the price an amount equal or proportionate to the remaining period?

Figh principles which are followed by ancient jurists stipulate that: If the debtor paid the debt before its maturity date then the creditor has nothing to be paid to him for the remaining period, because he has voluntarily paid prior to the payment due date. However, the contemporary Jurists stated that if the debt becomes due because of the death of the debtor or it is paid before the maturity date then the

Murabaha should be confined to the elapased days, saying that it is better for both parties.

Thus the aforementioned paragraph supports the point of view of ancient jurists who considered the profit to be realized when a subsequent contract is concluded, because he has to obtain nothing even if the debt is paid before the due date, thus the debt is considered as a loan that must be paid to the bank on its due date.

However, there are two matters to be clarified before answering the question:

First: The bank Act is drafted by a group of trusted jurists on the basis of the provisions and rules of the Islamic principles and Shari'ah.

Second: If the Governor (Wali Al-Amr) has issued an order, other than disobedience of Allah, he should be obeyed as declared by scholars.

Since an order was issued by the Governor for the execution of paragraph (C) of the Act, yet it is not leading to the disobedience of

Allah and not prohibited by Shari'ah rules then it is a duty to be applied.

Therefore, I opine that: the total profits are to be considered in the year in which the subsequent contract has been concluded, and here it is 1980.

Source:

Jordan Islamic Bank for Finance and Investment, Book of Fatwas, Parts (1), and (2), Fatwa No. (7).

Question (2):

The bank is buying and financing particular goods at the request of the partner (who is the purchase orderer at the same time) where the partner sells the goods and receives part of the price in cash and the other part is sold in installments spreading over (24) months. The process of settlement of accounts with the partner takes place after the conclusion of the last contract of sale with the last buyer and after the partner hands over the cash amount and the remaining amount in promissory notes to the bank.

Practical hypothetical example:

The bank financed a Murabaha Partnership Transaction with a customer in the amount of (1000 JD). The partner sold the goods in the amount of (1240 JD), out of which the buyer paid an amount of (340 JD) in cash and the remaining value of (900 JD) to be paid in installments at (24) equal monthly installments. The first installment will be due on May 31st, 1980 and the last installment on April 30th, 1982.

The bank, out of this accounting process, obtained a profit of (120 JD) that was deposited in of investment revenues account.

Therefore, Shariah opinion is sought with regard to the following to enable the bank to conduct Shari'ah compliant financial procedures prior to the end of the current fiscal year:

First: Are the profits shown in the example above (that amount to 120 JD) considered profits achieved in 1980 only?

Second: Or shall those profits be distributed to match the cash amount received at settlement time as well as the

installments the buyer has promised to pay and thus be distributed over the years: 1980, 1981, 1982?

Answer:

The contract that you have mentioned does not apply to Mudharabah contracts, Murabaha contracts or even to contracts known along the history of Islamic Shariah, but it is a new kind of contracts although it bears some elements and features of Mudharabaha and some signs of Murabaha contracts, however, this does not preclude it from being a partnership established on trade and profit, where the profit is not specific and no specific share, so there is nothing included in it that makes it prohibited as indicated in my written answer dated 08/01/1980 which you referred to in the letter. Hence, based on your request, the question is limited to how you can calculate the profit.

From the scenarios mentioned in the latter it was found that the bank purchases and finances specific goods, at the request of the partner who sells the goods to another person, and receives part of the price in cash and the remainder will be divided into

installments over (24) months (for example). The process of settlement of the accounts with the partner takes place after the conclusion of the last contract of sale with the last buyer and after the amount of cash is deposited to the bank by the partner as well as handing over promissory notes to the bank for the remaining amount.

From this it is clear that during the accounting process, the profit had been identified for the bank and that the rest of the price becomes a debt deferred for a specific date or terms, and due to the bank at maturity dates. This situation is covered by the opinions of Sheikh Al-Islam Ibn Taymiah that according to the opinions held by Imam Ahmad that if two partners settled their accounts without sorting, then that will be considered as sharing, even if the money is lost after that, the (loss) will not be compensated by profit. Although this type of contract is not Mudharabah but has some similarities to it, as I mentioned to earlier, the profits can therefore be measured in this contract based on what is stated in Paragraph (a) of article 19 of the articles of association of the Islamic Bank whereby the profit is realized upon exercise of accounting which is

based on receiving or actual realization through recognition and acceptance.

It is also understood from Paragraph (2) of article (526) of the Jordanian Civil Act No. (13) of 1976, which its provisions are based on Islamic Figh, principles and norms (that the rest of the price in the event of a defer is considered a deferred debt against the buyer).

Therefore, the acceptance of the seller to defer the price drops his right to withhold the sold item and he undertakes to deliver it to the buyer as shown in the second paragraph of Article (523) of the aforementioned Civil Code.

Hence, it is permissible to register the achieved profits at the completion of accounting between the two partners in 1980 which is not related to the rest of the deferred debt due on the last buyer.

Source:

Jordan Islamic Bank for Finance and Investment, Book of Fatwas, Parts (1), and (2), Fatwa No. (8).

(8.2) Amending the profit margin

Please provide Shari'ah opinion regarding setting long terms for Murabaha transactions with variable profit margins?

Answer:

The determination of profit margins in Murabaha transactions is either to se set within the framework of the contract (which regulates future dealing with the customer or within the Murabaha transaction) that is carried out under such framework:

First: In case the profit margin is determined under the provisions of the contract framework to be in specific percentage (…%) for specific period (…) then this specification is only a hypothetical estimate that reflects the desire of the bank and the customer and its achievement is only made through transactions, hence according to Shari'ah, there is no objection to change this profit margin in the future for a new term and even for the current period provided that the bank has retained its right to change it as soon as it informs the customer.

Second: However, in the case of execution of a Murabaha transaction as per the framework, then according to Shari'ah there is no room to increase or decrease its profit margin to be connected with the increase or decrease of its term. Yet the percentage can be discounted without linking it to time. Also, it is permissible to extend the credit term without increasing the percentage. Nevertheless, the basic principle is to execute the transaction as it is, in accordance with the agreement. In the event Murabaha margin is changed then it is not a condition to liquidate the previous Murabaha and settle its due amounts and reopen the new facility margin, as it is possible to enter into a new debt while keeping the debt of the earlier transaction pending, or its maturity is confirmed, but it should remain as a trust with the debtor, in order to be carried out as a balance to the new transaction.

Source:

Dallah Al-Barakah Group, Development and Research Department, " Book of Fatwas and Answers in Banking Applications", part (1), Fatwa No. (8).

(8.3) Bases and rules of profit determination in Murabaha transactions

Question:

A client approached us and promised to purchase goods, he put a condition for us to pay an advance amount upon opening the credit and prior to the receipt of the goods from the exporter. Is it permissible for us to increase the profit in such a situation, to cover the period between the payment of the amount to the exporter and the contracted party who desires to purchase?

Answer:

Determination of the profit in the contract is made according to an agreement between the seller and the buyer and will not be affected by the internal considerations taken into account in such determination. However, the seller has the right to increase the profit whether a lump-sum or percentage without linking it to the term. Here we see if there is a promise regarding the amount of profit and the conditions of opening the credit ended into accelerating advance payment to the exporter, this would have no

impact on Murabaha because the capital did not increase. However, if there is no promising and the matter is just a bargaining then both parties may alter or change the profit rate implied in the desire and promise to purchase.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, parts (1), and (2), Fatwa No. (445).

(8.4) Calculation of profits according to the number of days during which payment is made

Question (1):

Is it Shariah permissible for the promissory note to reflect the percentage of profit tied up to time?

Answer:

The statement of the percentage of profit (11% per annum), which is tied up to specific time, should be deleted from the notice of acceptance in reply to offer notice by the client in execution of the promise. No objection to refer to the agreed upon amount of profit in the promissory note without linking it with any period of time, as profit in Murabaha is part of the price and can not be separated to be divided over time (albeit the maturity term has a noticeable effect in the increase of the price), because the notice of acceptance is a part of the contract, hence adding it to the notice of execution of agency and purchase offer notice the contract is completed. It is prohibited, in the contract, to link profit to time.

As for (the contract framework) which regulates the future dealing with the customer, we would not mind such a reference, as it was nothing but a promise and statement describing the conditions to be taken into account as well as it is not a contract and does not result in action of sale or purchase except after the exchange of the desire of the two parties in implementation of the specific transaction through mutual submitted notices.

Source:

Dallah Al-Barakah Group, Development and Research Department, " Book of Shari'ah Fatwas and Answers in Banking Applications", parts (1), Fatwa No. (7).

Question (2):

Islamic Banking System in Luxemburg offered Qatar Islamic Bank on 15/01/1985 to contribute in financing the purchase of a land, machineries and equipment for an American company located in the United States according to mode of Murabaha transaction with a value of 71.4 million Dollars considering that Islamic Banking System provides finance of 3.36% and requires other partners to

finance 7.63% of the value of the transaction provided that the payment of the amount will be after 14 months. The annual return of the transaction is 12% which will be due on March 21st,1986. Qatar Islamic Bank approved to contribute 550 thousand Dollars in terms of a dedicated deposit provided that Islamic Banking System has to provide a bank guarantee to ensure the payment of the deposit plus the profit that amounts to 66 thousand Dollars. Thence Islamic Banking System actually provided the required bank guarantee on February 20th,1985 which will be effective as of 24/02/1985 and expires on 14/02/4/1986. However, before the expiry of the guarantee the bank received the amount plus the profits.

It was also noted that the bank on 11/03/1985 wrote to Islamic Banking System to amend the amount of profits to 33.66733 U.S. Dollars in lieu of 66 thousand Dollars as the contribution of the Bank in Murabaha will commence on 14/02/1985 and results in a return of 12%. That is to say the duration of the deposit is 364 days and hence the returns should be 3.66733 Dollars and not 66 thousand dollars (i.e. the Bank calculated its share of the profits

based on the number of days). Hence Islamic Banking System approved this amendment.

Kindly provide the Shari'ah opinion in this transaction?

Answer:

The board founds that this is an error which has been declared by the bank in due time.

Source:

Fatwas of shari'ah Board of Qatar Islamic Bank, Fatwa No. (67).

(8.5) How to determine the price and profit in case of difference in credit currency

Question:

What is the modes of contracting concluded to sell goods in case of deferred documentary credits deferred to the bank?

Answer:

Documentary credit opened by the bank in which it is a beneficiary in case of Murabaha transactions for the purchase orderer if value is deferred in a currency other than the currency specified in the Murabaha contract it is prohibited by Shari'ah to execute this transaction on Murabaha basis because it is not possible to determine the cost of the commodity in the currency specified in the promise.

The Shariah acceptable alternative is one of the following two alternatives:

First: Either to carry out the Murabaha transaction accordint to the currency specified in the credit, and when the customer

comes to pay, he may agree with the bank to pay in other currency cash at the rate prevailing on the maturity date.

Second: Or execute the sale transaction on the basis of bargaining whereby the bank estimates the price that it deems conducive to its interest and agrees with the customer to enter into a contract of sale accordingly. Then if the bank paid the value of the credit and discovered injustice in it against the bank or the client after knowing the cost then there is no objection for both parties to agree, at once, without any prior collusion to increase or reduce the sales price to amend the price specified in the previous contract.

Source:

Dallah Al-Barakah Group, Development and Research Department, Resolutions & Recommendations of AlBaraka Symposia on the Islamic Economy, (First, Second and Third Seminars), Fatwa No. (6).

(8.6) Calculation of profit for advance payments offered to the exporter

Question:

Kindly provide with Shari'ah Opinion on the following :

With regard to Murabaha credits, Kuwait Finance House is used to calculate the cost of goods on the day of payment and add to it a specific percentage as a profit of selling operation to the client, as the period increases the percentage increases. Our inquiry is about the following case:

If a condition of the credit is to pay an advance payment to the exporter while the goods will arrive after about 3 months and the remaining value will be paid upon the arrival of the goods. Is it permissible for Kuwait Finance House to include this period when calculating its profit share?

Illustrative example :

Upon purchasing goods in Murabaha, for example, at a value of 100 Dinars, and the client requests payment to be after one year. The calculation of the profit will be as follows:

100 Dinars * 10% = 10 DK in the particular case of the question, for example, quarter of the profit will be paid in advance on 1/1/89, the three quarters on 1/4/ 89 upon the arrival of the goods and payment will be made after a year as of 01/04/89, i.e. on 01/04/90. The down payment is 25 Dinars * 10% for 15 months = DK 3.125. Payment will be made upon the goods arrival and it is 75 Dinars * 10% for one year = 7.500 Dinars. i.e. the total profit shall be 10.625 Dinars and the percentage becomes 10.625% instead of 10%.

The difference is clear that profit is calculated according to the three-months term for the advance payment. Is this method of calculation permissible or not?

In conclusion I kindly request your approval for me to attend the discussion of this inquiry to provide any details that you might need as far as this matter is concerned?

Answer:

The cost of goods should be known before entering into Murabaha transaction. Bargaining in profit is also allowable in Murabaha transactions as well as the cost and the profit (either in amount or percentage) must be known at contracting.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (459).

(8.7) Determination of the percentage of profit in the purchase promise

Question (1):

Please provide Shari'ah opinion regarding the addition of a paragraph to the purchase promise that determines the percentage of profit to be agreed upon by the two parties at the conclusion of the sale contract?

Answer:

The board looked into the wording of the promise to purchase used by the company up-to-date and decided to redraft the promise to purchase form and include the request of the company with regard to determination of the percentage of profit, and the board also introduced some changes to the above mentioned form and approved it as in the format annexed to this resolution and hence the company shall replace the old form of promise to purchase with this attached form.

Source:

Shari'ah Board, "Collection of Shari'ah Fatwas", Al-Rajhi Banking & Investment Company, Resolution No. (60).

Question (2):

Is it permissible for Kuwait Finance House to enter into a Murabaha sale at a percentage of profit to be agreed on delivery date?

Answer:

It is impermissible to carry out such transaction due to the ignorance which leads to the dispute because of the ambiguity in price due to ambiguity of profit.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (103).

(8.8) Increasing the margin in return for deferral of payment

Question:

Please provide Shari'ah opinion in case of increasing the price in return for the defer of payment in the event of the arrival of the goods and prior to the preparation of Murabaha contract and delivery of documents and goods to the client?

Answer:

It is not permissible to increase price, in this case, in return for the increase of the tem of payment and the client should abide by the provisions of the promise to purchase because the bank is following the principle that the promise of purchase is binding.

Source:

Fatwas of shari'ah Board of Qatar Islamic Bank, Fatwa No. (15).

(8.9) Postponing the specification of the profit ratio

Question:

Is variation in the determination of profit ratios permissible based on their nature as capital profits or operational income?

Answer:

If the subject of Mudharabah is assets that generate income, then it is permissible for the Mudharib and the capital owner to agree on dividing this income between them in specific ratios under account and to agree on different ratios in case of sale of the assets. However, if the assets are sold at a price less than its purchase price then the difference shall be offset from the operational income.

Source:

Dallah Al-Barakah Group, Development and Research Department, Resolutions & Recommendations of AlBaraka Symposia on the Islamic Economy, (First, Second and Third Seminars), Fatwa No. (4).

(8.10) Receiving a percentage from the profits of the client company

Question:

In the event that Kuwait Finance House sold equipment to an industrial company in mode of Murabaha; is it permissible for Kuwait Finance House, in addition to the selling price, to receive specific percentage out of the annual profits of this company, considering that Kuwait Finance House is not a partner to this company?

Answer:

The Committee opines that the first part of the question, which is the selling of the equipment in Murabaha mode to the industrial company, is Shari'ah permissible.

However the second part of the question, concerning receiving a percentage out of the profits of that company, is Shari'ah impermissible because the equipment and generated profits thereby have become the exclusive property of that company and Kuwait

Finance House has nothing to do or has no relation to this company.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (123).

(9)

Guaranteeing Murabaha Debt

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(9.1) The guarantor

Question:

Is it permissible for the buyer, in Murabaha sale, to appoint a guarantor?

Answer:

It is permissible to appoint out a guarantor (in Murabaha sale on credit) like any other sale on credit.

Source:

Dalah Al-Barakah Group, Department of Development and Research, Resolutions & Recommendations of AlBaraka Symposia on the Islamic Economy, Al-Barakah First Symposium, fatwa No. (9).

(9.2) Mortgage of sold goods

Question:

Is it permissible for the Islamic bank to use the commodity sold in a Murabaha transaction as collateral?

Answer:

In view of the fact that the "contract is the law of the contractors" then if the seller contractually stipulated that the sold material be retained until the performance of the entire price then this is a condition required by the contract. However, the seller is entitled to retain the sold material if the price will be paid on the spot, otherwise if it is on credit basis then it is impermissible to retain the sold material as the seller in such case has already accepted the delay of payment; yet he has the right to put the sold material under trust-mortgage a matter that is officially stipulated in the contract until the whole price is settled down, in order to ensure the right of the bank, as the trust-mortgage does not prohibit the owner from disposing of his property.

Source:

Fatwas of Shari'ah Board of Dubai Islamic Bank, Fatwa No. (22).

(9.3) To keep the registration in the name of the bank

Question:

Is it permissible for the bank to purchase a residential house, register it in its name and then sell it to the customer of the bank on installment basis for a specific period of time against conclusion of an initial sale contract only and without registering such a house at the real Estate Registration Department, provided that same registration will be conducted at the end of installment period?

Answer:

This is permissible unless the (purchaser) client offers another mortgage that fulfills its obligations towards the bank.

Source:

Fatwas of shari'ah Board of Qatar Islamic Bank, Fatwa No. (29).

(9.4) Presentation of cheques, bonds and the like

Question (1):

A client requested to purchase goods, vehicle or any other commodity from the department of Local Murabaha. Based on our consideration of the sale form submitted by the client we are in need of a strong guarantee to execute the transaction and so we ask for the submission of a guarantee cheque from the guarantor.

Is it Shariah permissible, to ask for the submission of a guarantee cheque from the guarantor?

Answer:

Upon receipt of a cheque from the guarantor to ensure the settlement of the client's debt, in case of default in payment, the guarantor should be provided with a written letter which stipulates that the cheque will not be drawn except in the case of non-payment bearing in mind that when the client delayed the payment of one installment all other installments should be due in order to preserve the right of the guarantor for fear of submission of the

cheque before the need for that; yet without negligence of the right of the Kuwait Finance House.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, parts (1), and (2), Fatwa No. (397).

Question (2):

Is it permissible for the purchase orderer to submit bonds or cheques for the deferred price?

Answer:

There is no objection, in case of credit transactions, to demand bills, cheques or promissory notes from the customer according to the maturity dates of the due installments of the price.

Source:

Dallah Al-Barakah Group, Development and Research Department, Resolutions & Recommendations of AlBaraka Symposia on the Islamic Economy, (First, Second and Third Seminars), Fatwa No. (11).

(9.5) The sold commodity as guarantee

Question:

Is it permissible for the Islamic bank to use the sold commodity in Murabaha transaction as guarantee?

Answer:

It is Shari'ah impermissible in any form to use a commodity sold in Murabaha transaction as guarantee. For example:

First: The Islamic bank is not allowed to retain the ownership of the sold commodity until the settlement of its price by the purchase orderer.

Second: It is impermissible to mortgage the sold commodity, in any form, on behalf of the bank.

Third: It is impermissible to insure the sold commodity on behalf of the bank.

However, the board opines that it is permissible for the bank, in case of property sold in Murabaha mode, to obtain guarantees other

than the retention of the ownership or mortgage of the sold property. If the bank failed to do so then it has to take other measures or actions that would disable the purchase orderer from disposing of the property subject matter of Murabaha until he settles down the whole amounts due to the bank.

Source:

Fatwas of Shari'ah board of Qatar Islamic Bank, Fatwa No. (14).

(9.6) Client investment savings, and current deposits

Question:

A client requests to open a Murabaha credit. Sometimes we request provision of specific guarantees such as deposits or saving accounts where the value of the credit will be withheld as a guarantee. Thence the credit will be opened.

What is the Shari'ah opinion regarding this action?

And what is the Shari'ah opinion if the withheld amount is taken from the current account of the client?

Answer:

The distraint, which has been taken at the expense of saving account or the deposit of the client applying for a credit, is considered as a prevention of the partner from using his right of partial or whole restitution of his share in the partnership after he had been previously permitted by his partner (the bank) to do so, and this distraint is to ensure the possibility of setting-off between the obligation arising from the opening of the credit and that share,

whether it is a deposit or saving account, although their profits remain entitled for the owner of the account or deposit, whereas the distraint against the current account of the client represents an agreement by which the borrower (owner of the current account) refrains from recovering the loan, during the term/period of distraint, to keep it valid for clearing, whereby the loan maintains a specific term which will be binding to the borrower (the account holder) according to the Maliki opinion which states that the term in case of loans is binding; and God knows!

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, parts (1), and (2), Fatwa No. (449).

(10)

Agency in Murabaha Contracts

(10.1) General provisions of agency in Murabaha transactions

Question (1):

Is it permissible to appoint the client as an agent of the company, and what are the possible cases in Murabaha and documentary credit?

Answer:

First: If the company appointed a client as its agent to import, on its behalf and its name, then there is no objection for the credit to be in the name of the client, as he directly purchases in his name but for the benefit and interest of the principal. The agent is entitled to make contracts under his name and has the right to declare himself as an agent or not. Upon documents arrival a contract would be entered into between the company as seller and owner of the goods and the client in his capacity as purchaser, provided that the latter has to inform the company that the agency has been implemented and completed i.e. the Company has possessed the commodity.

Second: If the Company provided the client with an agency to purchase a commodity on its behalf, and then sells it to himself, and the selling price has already been specified by the company, then this action is also permissible and the agent will represent the two parties of the contract. The agent should have two capacities i.e. his capacity as the agent of the company in selling to himself or to any other party at specific price and his capacity as the principal purchaser by himself. However, the agent (in this case also) should have to send a notice to the company showing that he has executed the agency and purchased the commodity to himself in order to draw a clear line between the periods of the two warranties and avoid confusion and overlapping between the two successive warranties, i.e. the warrant by the principal (the company), between the period of the execution of the agency and up to the time of selling from the agent to him self, and the warrant by the purchaser (the ex-agent), in view of the fact that as soon as he sells the commodity to himself it will be under his warranty, yet

if the commodity is damaged during this period it will be his responsibility. Hence the agent has to send the Company a dated notice which shows that he has executed the agency and sold the commodity to himself. Although, these procedures are permissible and included within the recommendations of Dallah Al-Barakah First Fatwas Forum but this model is inadvisable as the role of the company is almost hidden as well as its interests will be under risk, because the agent might possess the commodity and delays sending the purchase notice during which time the commodity might be subject to damage and accordingly the agent might add this damage to the period during which he was an agent and claimed that it is just a custody in trust in order to charge its warranty to the Company.

Third: The following steps should be carefully observed, in giving Murabaha credit ceiling and agency to purchase local goods … etc, to ensure Shari'ah compliance:

(a) A letter specifying credit and its restraints besides all relevant studies and relevant documents which are all considered as promises.

(b) Conclusion of a general frame agreement that explains the execution steps and refers to the general terms and provisions of the dealing, the promise, the purchase order, the intended agency and Murabaha which will be concluded in due time … etc. This agreement is also considered as a promise and its conditions will be referred to in subsequent contracts.

(c) The client has to sign a purchase order and conclude an agency with the company to purchase on its behalf.

(d) To provide the client with a cheque to his order for the execution of purchase agency on behalf of the company, yet there is no objection for the client, as an agent, to purchase in his name.

(e) Subsequent the execution of the agency, a Murabaha contract should be concluded by which the client purchases

which are now under the possession of the company pursuant to the price stipulated in Murabaha. The Murabaha contract may be concluded by exchanging of two notices: the first notice to show that the client has executed the agency and purchased the goods from the company, whereas the second notice is the answer thereof from the company which confirms that it has sold the goods in Murabaha as well as includes the specification of price and profit. On the other hand the signature of the client on the invoice which shows that he is the purchaser (and the Company signature on the invoice to show that it's the seller) is not enough, as there should be available a clear document showing execution of purchase and selling which might be a separate contract (Murabaha contract) or exchange of offer and acceptance notices, intending Murabaha as shown in paragraph (e) above. All above mentioned principles and steps should be followed by conclusion of relevant contracts and documents that must be sent for approval.

Source:

Dallah Al-Barakah Group, Development and Research Department, " Book of Fatwas and Answers in Banking Applications", parts (1), Fatwa No. (59).

Question (2):

Is it Shariah permissible to enter into a Murabaha finance transaction with a client of an interest-based bank, through the latter?

Answer:

This method may theoretically satisfy the minimum steps required for a Shari'ah compliant Murabaha transaction in which the bank authorizes the client to purchase, as an agent and sells to himself in Murabaha besides informing the bank to that effect. It is similar to the procedures of Purchase agency conducted through international banks and affiliate companies whereby they purchase products and sell them to their clients or to themselves. Based on the Fatwas of Al-Baraka symposiums:" it is permissible for the agent to sell to

himself provided that the price is determined by the principal". Yet, practical application might involve deviation towards forbidden fictitious transactions and loans with interest, a matter that needs more accuracy and observation. For example: (1) the money may be delivered directly from the bank to the seller in lieu of the client whose role must be confined only to the conclusion of contracts of purchase and selling to himself; (2) a sharp line should be drawn between the steps of purchase and selling even for a short time which can be achieved by sending a telex or fax which shows that purchase agency has been implemented and then selling to himself have been executed. This will prevent overlapping of warranties of the seller in murabaha and the client (or the agent/purchaser) in Murabaha transaction. As for this case, the roles of the client, interest-based bank and the Islamic bank should clearly be specified. If the relation of the client with the interest-based bank is a Murabaha transaction then what is the role of the Islamic bank? And what profits it will obtain? And why?. Hence the interest-based bank either plays the role of the agent of the Islamic Bank and takes specific commission, runs the Murabaha procedures through its client and the whole profit returns to the Islamic bank;

or the Murabaha to be carried out between the Islamic bank and the client of the interest-based bank in which case the latter plays only the role of the intermediary or broker (procure clients) with a certain commission. Whatever the case may be the money should be delivered directly from the Islamic bank to the seller with whom the client is dealing. Also the bank has to claim, from time to time, the transaction documents that prove and confirm the reality of dealings. Otherwise the bank has to conclude a Mudarabah contract between the Islamic bank (the owner of the money) and the interest-based bank (the Mudarib) provided that both parties have to abide by the Shari'ah dealings in execution and follow up of the contract besides financial accounting and auditing.

Source:

Dallah Al-Barakah Group, Development and Research Department, " Book of Fatwas and Answers in Banking Applications", part (1), Fatwa No. (60).

(10.2) Appointment of the purchase orderer as an agent

Question (1):

Is it permissible to appoint the client as an agent of the company, and what are the possible cases in Murabaha and documentary credit?

Answer:

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if the commodity is damaged during this period it will be his responsibility. Hence the agent has to send the Company a dated notice which shows that he has executed the agency and sold the commodity to himself. Although, these procedures are permissible and included within the recommendations of Dallah Al-Barakah First Fatwas Forum but this model is inadvisable as the role of the company is almost hidden as well as its interests will be under risk, because the agent might possess the commodity and delays sending the purchase notice during which time the commodity might be subject to damage and accordingly the agent might add this damage to the period during which he was an agent and claimed that it is just a custody in trust in order to charge its warranty to the Company.

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(j) Subsequent the execution of the agency, a Murabaha contract should be concluded by which the client purchases

which are now under the possession of the company pursuant to the price stipulated in Murabaha. The Murabaha contract may be concluded by exchanging of two notices: the first notice to show that the client has executed the agency and purchased the goods from the company, whereas the second notice is the answer thereof from the company which confirms that it has sold the goods in Murabaha as well as includes the specification of price and profit. On the other hand the signature of the client on the invoice which shows that he is the purchaser (and the Company signature on the invoice to show that it's the seller) is not enough, as there should be available a clear document showing execution of purchase and selling which might be a separate contract (Murabaha contract) or exchange of offer and acceptance notices, intending Murabaha as shown in paragraph (e) above. All above mentioned principles and steps should be followed by conclusion of relevant contracts and documents that must be sent for approval.

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himself provided that the price is determined by the principal". Yet, practical application might involve deviation towards forbidden fictitious transactions and loans with interest, a matter that needs more accuracy and observation. For example: (1) the money may be delivered directly from the bank to the seller in lieu of the client whose role must be confined only to the conclusion of contracts of purchase and selling to himself; (2) a sharp line should be drawn between the steps of purchase and selling even for a short time which can be achieved by sending a telex or fax which shows that purchase agency has been implemented and then selling to himself have been executed. This will prevent overlapping of warranties of the seller in murabaha and the client (or the agent/purchaser) in Murabaha transaction. As for this case, the roles of the client, interest-based bank and the Islamic bank should clearly be specified. If the relation of the client with the interest-based bank is a Murabaha transaction then what is the role of the Islamic bank? And what profits it will obtain? And why?. Hence the interest-based bank either plays the role of the agent of the Islamic Bank and takes specific commission, runs the Murabaha procedures through its client and the whole profit returns to the Islamic bank;

or the Murabaha to be carried out between the Islamic bank and the client of the interest-based bank in which case the latter plays only the role of the intermediary or broker (procure clients) with a certain commission. Whatever the case may be the money should be delivered directly from the Islamic bank to the seller with whom the client is dealing. Also the bank has to claim, from time to time, the transaction documents that prove and confirm the reality of dealings. Otherwise the bank has to conclude a Mudarabah contract between the Islamic bank (the owner of the money) and the interest-based bank (the Mudarib) provided that both parties have to abide by the Shari'ah dealings in execution and follow up of the contract besides financial accounting and auditing.

Source:

Dallah Al-Barakah Group, Development and Research Department, " Book of Fatwas and Answers in Banking Applications", part (1), Fatwa No. (60).

Question (4):

If one a client of Qatar Islamic Bank wants to import some goods from Europe to Saudi Arabia (for example), is it Shariah permissible for the Bank, Shariah, to authorize the purchaser or any of his employees to receive and deliver such goods, provided that the client bears all costs incurred thereof?

Answer:

The Bank is not permitted to authorize the purchase orderer, but it is permissible to authorize a clearance office and include the expenses of clearance within the total cost

Source:

Fatwas of shari'ah Board of Qatar Islamic Bank, Fatwa No. (39).

Question (5):

A client asked the bank to purchase materials and sells them to him in Murabaha mode. Hence, is it permissible for the bank to

authorize the purchase orderer and give him the required money in cash to purchase the required material from a third party?

Answer:

It is impermissible to give the cash money to the client to purchase the goods through a Murabaha transaction, but rather the bank has to purchase the goods, possesses the same and resells them to the client.

Source:

Shari'ah Board, Fatwas, Islamic Bank of Western Sudan, Fatwa No. (13).

Question (6):

Is it permissible for the bank to authorize the purchase orderer in a Murabaha transaction to be its agent?

Answer:

Based on the fifth recommendation issued by "Jeddah Islamic Figh Academy" (Resolution No "80/7/D8") which reads as follows: "…

to reduce, as far as possible, the use of Murabaha to purchase orderer and limits it to such transactions that fall under the supervision of the bank and which are free of risks of violation of governing Shari'ah rules", as well as to expand in other investment modes such as Mudarabah, partnership (Musharaka) and lease (Ijarah) transactions besides periodical evaluation, following up and utilization of such fields and making use of the acceptable cases of Mudaraba to enable control dealings and to provide accurate auditing of the results".

Following the committee review of the first Fatwa of the First Al-Barakah Forum (No"15") that it is permissible to authorize a person as agent to purchase a specific commodity and sells it to himself at a given price specified by the principal; the committee sees that this Fatwa is about the general agency of absolute sale and does not include the particular case of authorization by the Bank to the purchase orderer in Murabaha transactions, as Murabaha sale has its own specific considerations which are different of those of absolute sale, whereas the bank should have a prominent and basis role to play in purchasing the commodity to

itself, in the first place, then possesses it and resells it to the purchase orderer, in an effort to avoid interest-based financing, and in order that the guarantee which justifies profit, would not vanish. Hence the Committee is of the view to adopt the opinion of the impermissibility of agency to the purchase orderer in case of Murabaha transactions.

Source:

Dallah Al-Barakah Group, Development and Research Department, Resolutions & Recommendations of AlBaraka Symposia on the Islamic Economy, (First, Second and Third Seminars), Fatwa No. (7).

(10.3) Appointment of the shipping company as an agent

Question:

Is it permissible for the bank to appoint the shipping company as its agent to receive the goods outside Qatar if the client requested so, in case the bank has no agent in the designated delivery place?

Answer:

There is no objection, in such case, to appoint the shipping company as an agent of the bank to receive the goods.

Source:

Fatwas of Shari'ah Board of Qatar Islamic Bank, Fatwa No. (50).

(10.4) Issuance of the title deed of the sold item in the name of the purchase orderer

Question:

Is it permissible to issue the title deed of the sold item in the name of the purchase orderer?

Resolution:

Shari'ah board of Al-Rajhi banking and Investment company has reviewed: the letter submitted by the deputy general manager - external relationships, No (SR/109/89), in which he requested not to abide by issuing the title deed of goods purchased by "Al-Rajhi Banking and Investment Company" in its name and rather be issued in the name of the other party who repurchases from Al-Rajhi Company in his capacity as the purchase agent of Al-Rajhi Company, who writes on the title deed and documents a phrase whereby he acknowledges that he has purchased same goods in his capacity as an agent of Al-Rajhi Company.

Based on the consideration of this matter and after reviewing the articles of the general agreement of Murabaha trading, the board decided to disapprove this request as the issuance of the title deed and ownership documents in the name of Al-Rajhi Company, as it is internationally known, is a proof of ownership by Al-Rajhi company of such goods which are included in such documents, otherwise the whole matter will tends to be a fictitious transaction, particularly that the other party is the beneficiary of the goods and their ownership will eventually be transferred to him.

Source:

Shari'ah board, "Collection of Shari'ah Fatwas", Al-Rajhi Investment Banking Company, Resolution No. (31).

(10.5) the authorization of the bank by the client to complete and sign the Murabaha contract

Question:

A client, in the Kingdom of Saudi Arabia, opened a Murabaha Credit, deposited an advance payment and, based on his trust on us, left the required documents, which is Murabaha contract, signed in blank to be filled in and finalized after the arrival of the shipment documents.

The contract will be completed in by the credit department on the arrival of the documents?

Answer:

It is permissible to authorize an employee of Kuwait Finance House, in his personal capacity, to complete the contract with the Kuwait Finance House.

Source:

Kuwait Finance House, Book of Fatwas on economic Issues, part (1), and (2), Fatwa No. (258).

(10.6) The case of the purchase orderer acting as distribution agent of the exporter

Question:

Is it permissible to pay the commission value in cash, then add its value to the price of the goods or deduct same from the total price of the goods and charge him on the net value only, and calculates the net profits accordingly, bearing in mind that some clients insist to pay the commission value in cash because it is related to the activities of the agencies and has no relation with trading in goods?

Answer:

It is permissible to pay the commission value of the imported goods trading agency based on the fees of the purchase orderer and Murabaha. If the purchase orderer is himself the trade agent then the commission value is paid to him pursuant to an order from the exporter. What ever the case is, the Kuwait Finance House is entitled to include this value in the costs and add it to the price besides the profit.

The Kuwait Finance House in paying this commission value to the trade agent has a separate capacity independent of the promise and Murabaha process as it is here acts as a payment agent of the exporter in paying the amount due from the exporter to the trade agent who is himself the orderer.

Source:

Kuwait Finance House, Book of Fatwas on economic Issues, part (1), and (2), Fatwa No. (89).

(11)

Insurance in Murabaha Contracts

(11.1) Insurance of sold commodity in Murabaha transaction

Question (1):

How far is it permissible for a client to insure a commodity in Murabaha transaction?

Answer:

The board views that insurance is permitted with Islamic insurance companies in the countries that have Islamic insurance companies. Accordingly, the bank may insure goods sold to its dealers, provided that insurance value should be added to the cost.

Source:

Fatwas of Shari'ah Board of Dubai Islamic Bank, Fatwa No. (21).

Question (2):

How far is it permissible for a client to insure commodities imported in Murabaha transactions?

Answer:

The Shari'ah board has reached a conclusion that the client is not entitled to insure commodities imported in Murabaha transactions, but rather the bank is to conduct this procedure as it is responsible for the arrangement of the commodity to the client and so bears the whole risk.

Source:

Fatwas of shari'ah Board of Qatar Islamic Bank, Fatwa No. (1).

Question (3):

Please provide us with the Shari'ah opinion regarding the permissibility for the bank to insure the vehicles sold by the bank in Murabaha transactions, considering that in the event of any accident to the sold vehicle then the bank will deduct only its due amounts from the client and in case the insurance amount exceeded the bank dues, it will return the excess to the client?

Answer:

No objection for the bank to insure the vehicles sold to its clients in Murabaha transactions provided that the compensation should be charged for the account of the purchaser/client as well as it may deduct such costs from the amounts due to the bank if there was a prior agreement in that respect.

Source:

Fatwas of shari'ah Board of Qatar Islamic Bank, Fatwa No. (80).

Question (4):

In the event that the bank insured the goods which are the subject matter of Murabaha, then should the value of the insurance be included in the cost of the goods before calculating the rate of profit of the bank, i.e. the profits in such case are calculated in accordance with specific rates out of the goods value and including the insurance value? Or the profits of the bank are calculated according to particular rates of the cost of the goods without the insurance value then the latter be added to the profits so that the

profit in this case becomes (Profits = Specific percentage of the cost of goods + Insurance Value), and inform the customer accordingly?

Answer:

The Board approved the first case, in which the profits should be calculated out of the value of the goods including the value of insurance. However, Dr. Ali also has asked to register his disagreement with this view as he supports the second view on this subject matter.

Source:

Fatwas of Shari'ah Board of Qatar Islamic Bank, Fatwa No. (24).

(11.2) Addition of insurance Installments in the value of the commodity

Question:

Please provide us with the Shari'ah opinion; is it permissible to include the insurance value within the cost of the Murabaha transaction?

Answer:

The question showed that insurance in Djibouti is obligatory and the answer is that: insurance should be included in the cost, yet its amount should not be subject to the calculation of the percentage of profit (rather its value must be added to the price (capital) after calculation of the profit) because it is not a subject matter of sale as the case of a commodity, it is rather an established burden, hence it should be added in its net value, without calculation of percentage of profit based on it.

Source:

Dallah Al-Barakah Group, Development and Research Department, " Book of Fatwas and Answers in Banking Applications", parts (1), Fatwa No. (67).

(12)

The first purchaser of the commodity in Murabaha transaction

(12.1) The case of the seller who is the lessor to the client and the owner of the commercial register

Question:

A store is owned by a businessman and the commercial register is in his name. He leased this shop to another party.

Is it permissible for him to purchase some goods from this lessee in Murabaha mode through the bank?

Answer:

It should be ascertained that the lease is real and not fictitious and that the lessee is the actual owner of the goods which are the subject matter of the Murabaha transaction and the bank has to be sure of the transfer of the goods from the store so as not be used as a preclude to deceptive practices which violate Shari'ah rules. Also such cases should be submitted to Shari'ah board before contracting.

Source:

Fatwas of Shari'ah Board of Dubai Islamic Bank, Fatwa No. (93).

(13)

Documents

(13.1) Shipment documents

Question:

The question is about the procedures followed by the bank in the event of the arrival of the goods prior to the arrival of the documents?

Answer:

The board approved the procedures being followed in such cases which include handing over the goods to the customer until the arrival of the documents then the value of the Murabaha contract is calculated at the exchange prevailing at the time of discount by the correspondent bank.

Source:

Fatwas of Shari'ah Board of Qatar Islamic Bank, Fatwa No. (79).

(13.2) Bills of lading

Question:

Is it permissible to finance Murabaha import transactions according to bill of collection provided that the bank has made prior agreement with the exporter (The beneficiary)?

Answer:

The board explained that the bank is allowed to enter into such transactions provided that the role of the bank should be clear since the outset of the transaction with regard to the sequence of the procedures according to Shari'ah; in the sense that the objective and aim is to provide the expenses of the documentary credit.

Source:

Fatwas of Shari'ah Board of Qatar Islamic Bank, Fatwa No. (21).

(13.3) Arrival of the goods prior to the arrival of the documents

Question (1):

Sometimes, in Murabaha credits, the goods arrive before the arrival of its shipment documents. In such a case the purchase orderer might ask the clearance of the goods prior to the arrival of the documents, whereby we fail to conclude the sale contract, because we do not know the cost of the goods and the other expenses.

Hence, is it permissible to hand over the goods to the client pursuant to a letter of guarantee issued by us, and at our expenses, to the shipping company until the arrival of the goods to know the actual cost and hence be able to conclude the contract with the purchase orderer?

Answer:

It is permissible to hand over the goods which were promised to be sold in Murabaha transaction if such goods arrived before the arrival of the documents. In this event reception of goods by the

promissor is like reception of purchase offer and it is a reception which takes place after the specification of the price and prior to the final agreement of sale. Hence the ruling here is that if the goods are damaged in his custody, then he has to warrant it at an amount equal to its value or to the price (whichever less), i.e. to estimate its value and compare it with its price then whichever less is taken as the warranty value. Thence, the sale contract would be concluded, upon the arrival of the documents and this previous possession shall replace reception, otherwise if the damage is caused by the client then he has to warrant the value of the goods whatever it amounted to.

Source:

Kuwait Finance House, Book of Fatwas on economic Issues, part (1), and (2), Fatwa No. (55).

Question (2):

Some times credits of import are opened by virtue of promises issued by the clients to purchase the goods in connection with such credits through Murabaha transactions. However, in some cases the

goods arrive before the arrival of the relevant shipment documents and before we know the cost of such goods in Kuwaiti Dinars at the time our clients like to purchase and receive the goods. Thence is it allowable, in such case, to change the mode of sale from Murabaha sale transaction to bargaining sale?

Please find attached herewith a copy of a contract for the sale of goods through bargaining. Kindly read the terms and approve it with a copy to be sent to the purchase orderer?

Answer:

Since what has happened between the client and the Kuwait Finance House is nothing but (a desire and promise) then it is possible at any time prior to the signing of the contract to change the mutual desire to other form of contracting with the agreement of the two parties, and in this case it is permissible, based on the agreement of the two parties to enter into a contract through bargaining irrespective of the capital in the estimation of the price as well as the statement of the previous promise as Murabaha, bearing in mind that the proposed wording to promise and desire is

approved as Murabaha in order to avoid demurrage charges for the goods, then we do not object selling the goods of these documents to you through bargaining after mutual agreement on the sale price. Furthermore we have approved the proposed format of the sale contract.

Source:

Kuwait Finance House, Book of Fatwas on economic Issues, part (1), and (2), Fatwa No. (443).

Question (3):

To what extent is it permissible to execute the Murabaha transaction in case the goods arrived prior to the arrival of the documents and the bank is forced to allow the client to clear the goods pursuant to a customs clearance permit and then documents received with a violation i.e. they are issued in the name of the client, and to what extent is it allowable to execute the Murabaha transaction in case of the arrival of the documents before or at the arrival of the goods, while the invoices are issued in the name of the client?

Answer:

The board considered that the receipt of invoices in the name of the bank is one of the main pillars of the process of Murabaha as these invoices are the basic documents that prove the ownership and possession of the goods by the bank, hence the board opined that, for the second case which concerns the arrival of the documents before or at the goods arrival, since the invoices are issued in the name of the client, the documents should be rejected and the goods shall not be delivered to the client unless the bank gets, either by mail or by telex, new invoices issued in the name of the bank.

With regard to the first case, which is the arrival of the goods prior to the arrival of the documents and the bank was forced to allow the client to clear the goods through a customs clearance permit, then the documents were received with a violation of being issued in the name of the client, the board has set forth the following provisions to issue the clearance permit for the client:

First: To ensure that the credit did not state the name of the client.

Second: to take into consideration as far as possible that invoices are not issued in the name of the client from the same beneficiary.

Third: The credit should state that it is necessary for the beneficiary to notify the bank with the details of the consignment, and the invoice confirming that the invoice is issued in the name of the bank.

Fourth: If the beneficiary did not send any notice and upon the client request to issue a customs clearance permit, then a telex shall be sent to the beneficiary requesting him to notify the bank with the details of the invoice with regard to its value and its issuance in the name of the bank. However, the release permit should not be issued unless the beneficiary confirms that the invoices are issued in the name of the bank, except if the non-issuance of such permit will no doubt cause damage.

Notice: The general manager had commented that there are some cases which can not wait as well as the client can not wait

until the correspondent bank replies the telex of the bank, particularly if the client submitted his application on Wednesday or Thursday as Friday is a holiday of us while Saturday and Sunday are holidays in foreign countries, a matter that delays the delivery of the goods to the client.

The board opines, in principle that the invoices shall be issued in the name of the bank; but, if they are issued in the name of the client, then this is considered an exceptional case that can not be taken as a reference.

Source:

Fatwas of Shari'ah Board of Qatar Islamic Bank, Fatwa No. (58).

(13.4) Non-receipt of invoices in the name of the bank

Question (1):

Is it permissible to complete the execution of the promise to purchase and complete the sale of Murabaha for goods imported from abroad under a documentary credit, which did not show the name of the Islamic bank as a buyer in its bills while the bill of lading has been in the name of the bank?

Answer:

The board opines that in order to avoid recurrence of such cases, the documentary credit should essentially be opened in the name of the bank and should not show the name of the client. However, in the case before us the board allowed to submit another invoices in the name of the bank, even if the invoices are received by the telex provided that this telex invoice cancels the previous invoice.

Source:

Fatwas of Shari'ah board of Qatar Islamic Bank, Fatwa No. (46).

Question (2):

To what extent is it permissible to execute a Murabaha transaction based on a documentary credit if the documents have arrived as collection items due to non-issuance of the invoices on behalf of the bank?

Answer:

The board is of the opinion that to avoid the recurrence of such cases the documentary credit should essentially be opened on behalf of the bank except in cases where the bank fails to convince its client for a reason or another (such as presence of a power of attorney due to which the exporter refuses the appearance of the name of the customer on the order), in this case the credit should be opened in the name of the bank, for the account of the client provided that such case shall be presented later to the board.

However, the board has accepted the proposal of the general manager to pursue this technique on a limited scale at the beginning and then be subjected to evaluation according to results.

With regard to the case before us, which is the non-receipt of invoices on the name of the bank, the board has approved the submission of invoices on behalf of the bank, even if the invoices are received through the telex provided that the invoice sent by the telex cancels the invoice previously received.

Source:

Fatwas of Shari'ah Board of Qatar Islamic Bank, Fatwa No. (47).

Question (3):

To what extent is it permissible to execute the Murabaha transaction in case the goods arrived prior to the arrival of the documents and the bank was forced to allow the client to clear the goods pursuant to a customs clearance permit and then documents received with a violation i.e. they are issued in the name of the client, and to what extent is it allowable to execute the Murabaha transaction in case of the arrival of the documents before or at the arrival of the goods, while the invoices are issued in the name of the client?

Answer:

The board considered that the receipt of invoices in the name of the bank is one of the main pillars of the process of Murabaha as these invoices are the basic documents that prove the ownership and possession of the goods by the bank, hence the board opined that, for the second case which concerns the arrival of the documents before or at the goods arrival, since the invoices are issued in the name of the client, the documents should be rejected and the goods shall not be delivered to the client unless the bank gets, either by mail or by telex, new invoices issued in the name of the bank.

With regard to the first case, which is the arrival of the goods prior to the arrival of the documents and the bank was forced to allow the client to clear the goods through a customs clearance permit, then the documents were received with a violation of being issued in the name of the client, the board has set forth the following provisions to issue the clearance permit for the client:

First: To ensure that the credit did not state the name of the client.

Second: to take into consideration as far as possible that invoices are not issued in the name of the client from the same beneficiary.

Third: The credit should state that it is necessary for the beneficiary to notify the bank with the details of the consignment, and the invoice confirming that the invoice is issued in the name of the bank.

Fourth: If the beneficiary did not send any notice and upon the client request to issue a customs clearance permit, then a telex shall be sent to the beneficiary requesting him to notify the bank with the details of the invoice with regard to its value and its issuance in the name of the bank. However, the release permit should not be issued unless the beneficiary confirms that the invoices are issued in the name of the bank, except if the non-issuance of such permit will no doubt cause damage.

Notice: The general manager had commented that there are some cases which can not wait as well as the client can not wait

until the correspondent bank replies the telex of the bank, particularly if the client submitted his application on Wednesday or Thursday as Friday is a holiday of us while Saturday and Sunday are holidays in foreign countries, a matter that delays the delivery of the goods to the client.

The board opines, in principle that the invoices shall be issued in the name of the bank; but, if they are issued in the name of the client, then this is considered an exceptional case that can not be taken as a reference.

Source:

Fatwas of Shari'ah Board of Qatar Islamic Bank, Fatwa No. (58).

(13.5) Forged documents

Question (1):

Documents were received concerning Murabaha credit according to which a sale contract was signed. The buyer could not receive the goods due to reasons beyond his control and also beyond the control of the Kuwait Finance House. In this case of non- arrival of goods, compensation is made by the insurance companies, later, they revert to the shipping company which have damaged the goods. It has confirmed safety of the goods and then declined to deliver them.

What would be the status of the goods for which forged documents were submitted? Would the Kuwait Finance House be held responsible bearing in mind that the client has admitted his responsibility for the behaviour of the exporter and warranted the appropriate execution of the operation?

Answer:

If a warrant is issued by the promising buyer to the effect that he would guarantee whatsoever shortcoming may occur from the exporter in fulfilling his obligations, such a warrant is in conformity with Shari'ah opinion. As such, the promising buyer would be liable to guarantee for any damages hereto, but he can not be held bound for the purchase contract which he promised, because the subject matter of contract has been either nullified or defective.

Source:

Kuwait Finance House, Book of Fatwas on Economic Issues, part (1), and (2), Fatwa No. (63).

Question (2):

An arrangement was made with a client on (sugar) goods. After we opened the credit, documents were delivered to the Kuwait Finance House. Subsequently, according to the documents we informed the client that the goods are shipped and he may attend to conclude a

contract and receive it. Later, it was known that the documents were forged. When the client was asked to pay compensation for the declaration and guarantee signed by him as a guarantor of the supplier, the client expressed some reservations on that how he would be liable for compensation while we have sent him a letter confirming the goods delivery?.

Answer:

Claiming compensation is related neither to the mutual promise nor to the contracting procedures or delivery. Instead, it is a result of a previous warrant where the promising party has guaranteed the exporter for adequate performance and that the client would be liable for whatsoever consequences regarding the exporter's violation of specifications or restrictions which entail financial commitments that are known as "Darak" guarantee. The promising party's liability originates from the warrant but not the promise and subsequent procedures which include informing him to show up to sign the contract.

Source:

Kuwait Finance House, Book of Fatwas on economic Issues, part (1), and (2), Fatwa No. (448).

(14)

Registration and Documentation

(14.1) Transfer of ownership of goods from the seller to the buyer without registering them in the name of the bank

Question:

A property is purchased for the benefit of Kuwait Finance House, by virtue of initial sale contract, from a person in Kuwait. However, registration of the property in the ministry of justice was not completed. Meanwhile another person stepped to purchase the same property. Thence an initial contract was signed with him.

Is it permissible for the Kuwait Finance House to ask the seller of the property to directly register the property in the name of the purchaser or it is required to first register it with the Ministry of Justice in the name of the Kuwait Finance House and then re-register it in the name of the purchaser?

Answer:

There is no need to repeat registration, if the property has been sold after purchasing it and before the registration from the seller to the

benefit of the Kuwait Finance House, because registration is a formal procedure for authentication and the selling was between the Kuwait Finance House and the customer after purchase was made according to a legal contract from the original owner.

Source:

Kuwait Finance House, Book of Fatwas on economic Issues, part (1), and (2), Fatwa No. (332).

(15)

Credits of Murabaha

(15.1) The name according to which the credit will be opened

Question:

The Bank issues bills of lading and clearance permits (clearance of goods under Murabaha transactions) in a wording which indicates that the client has opened the credit, considering that the credit is opened in the name of the bank until the client receives the goods.

As this is the case, is it in contradiction with any Shari'ah controls of Murabaha sale transactions?

Answer:

It is not permissible for the client to open the credit by himself in case of Murabaha sale but the bank is the body to open the credit in its name as well as the goods should arrive in the name of the bank and the bank in turn endorses all relevant documents after concluding the selling contract.

In case the documents did not arrive then the clearance permit may be issued in the name of the client after concluding the sale

contract, hence, based on compliance with such provisions, there is no any objection

Source:

Fatwas of Shari'ah Board of Qatar Islamic Bank, Fatwa No. (70).

(15.2) Bearing the expenses of the cancelled credit

Question:

Please provide the answer regarding who will bear the expenses of a cancelled documentary credit of Murabaha transaction if it is cancelled by the purchase orderer or if the purchase promise was not executed for reasons related to the exporter?

Answer:

The board is of the view that should the execution of the purchase promise failed due to reasons related to the promiser then he has to bear the expenses and the costs of the actual damages incurred thereof.

Source:

Fatwas of shari'ah Board of Qatar Islamic Bank, Fatwa No. (53).

(15.3) the difference between the currency of the credit and the currency of the Murabaha

Question:

How to conclude contracts for selling commodities in documentary credits deferred to the bank?

Answer:

Documentary credit maintained by the bank in its favour regarding Murabaha transactions for the purchase orderer if its value will be paid by the bank on deferred date in currency that is different from the currency specified in the Murabaha contract then this transaction according to Shari'ah should not be executed on Murabaha basis, as it was not possible to determine the cost of goods in the currency specified in the promise.

The Shariah alternative is one of the following two things:

First: Either to carry out the Murabaha transaction based on the currency specified in the credit, as well as the client can

agree with the bank to settle his account in other currency at the rate prevailing on the maturity date.

Second: Or conduct the sale transaction on the basis of bargaining whereas the Bank estimates the price that deems in his favor and agree with the customer to enter into a contract of sale based on this price. Then if the bank paid the credit value and discovered injustice in it against the bank or the client after knowing the cost then there is no objection for both parties to agree, in a timely manner, without any previous collusion to increase or decrease the sales price as an amendment to the price specified in the previous contract.

Source:

Dallah Al-Barakah Group, Development and Research Department, " Ramadan Jurisprudence Seminars ", (First, Second and Third Seminars), Fatwa No. (6).

(16)

The Relation between the Client and the first Seller

(16.1) The deals contracted between the client and the exporter prior to the Murabaha contract

Question (1):

Please provide us with the Shari'ah opinion regarding the execution of Murabaha transaction for goods based on documents which arrived to the other bank which opened the credit?

Answer:

The opening of a credit by the client at a bank means that it is the purchaser of the goods from the exporter who is the beneficiary of the credit (the bank is an agent and sponsor of the client) and the exporter is a seller of such goods to the client at the price which the bank guaranteed its payment either from the client's money deposited by the client with it or from the bank money as a loan with interest. Hence there is no room for another bank to be involved in this transaction; because, if it intervened it will be the purchaser of the goods from the client pursuant to the prices that the client guaranteed for the exporter which he shall immediately pay and hence resell same the goods to him for a higher credit

price. Thus the transaction turns into a forbidden Ayna Sale as the request of the client to open the credit at his agent bank is considered as acceptance of purchasing from the client addressed to the exporter who expresses his acceptance by sending the relevant documents or the goods (similar to it is the sending of documents to other bank for collection). Therefore, in such case the role of the bank is confined to mere financing against a specific interest, even if it is called profit, because this sale is not concluded between the bank and the exporter and between the bank and the client as in the case of Murabaha financing but it is between the client and the exporter and the bank has just paid the price without any role by it in the purchase contract.

Source:

Dallah Al-Barakah Group, Development and Research Department, " Book of Shari'ah Fatwas and Answers in Banking Applications", part (1), Fatwa No. (10).

Question (2):

Please provide us with the Shari'ah opinion regarding the possibility of financing a sold deal?

Answer:

It is clear that this process is absolutely prohibited because it is based on the purchase of debt, as the deal was concluded between the seller and the buyer and the price is recorded as a debt against the buyer. Therefore there is no room for any mediation process whether in Murabaha basis or in other mode, leaving only the option of purchasing the debt with the offered profit margin which is Shari'ah prohibited and impermissible.

Source:

Dallah Al-Barakah Group, Development and Research Department, "Book of Shari'ah Fatwas and Answers in Banking Applications", part (1), Fatwa No. (11).

Question (3):

Please provide the Shari'ah opinion. Can the client seek Murabaha financing for purchasing an already sold Villa?

Answer:

According to the client's request, this transaction has been entered into by the customer with the seller of the villa and paid an advance payment. The customer has completed the purchase for himself and in his name. Hence, in such case the process can not be conducted on Murabaha basis, because the purchase was already concluded in favour of the customer and any involvement will be just financing on interest and not based on a commodity purchased by the company and sold through Murabaha transaction. However, the correct procedure is to authorize the client to purchase the commodity on behalf of the company before purchasing it to himself in order to enable the company resells it to him on credit basis.

Nevertheless, there is no way to finance this transaction in compliance with Shari'ah unless the contract between the client and

the seller of the villa is nullified and refunds or waives the advance payment or convince the seller to pay it back to the client and promise to provide the alternative buyer and that the company should purchase the villa before the conclusion of Murabaha sale contract with the client. Yet, the seriousness of nullification of the contract should be confirmed and shall not be tied up with the purchase of the villa by Al-Barakah Company.

Source:

Dallah Al-Barakah Group, Development and Research Department, " Book of Shari'ah Fatwas and Answers in Banking Applications", part (1), Fatwa No. (12).

Question (4):

Is it permissible in Shari'ah rules for a client to purchase for himself and for others by way of intrusion (Fedalah)?

Answer:

Based on the information received from the person following up the transaction that the Murabaha financing applicant has already

expressed his willingness to purchase a vehicle through the Company, he put in mind to submit his application to "Al-Barakah Company" before entering into a contract with the vehicle manufacturing company and before paying it the advance payment. Thence he applied to "Al-Barakah Company" in order to participate in the transaction with the remaining/residual percentage of share not paid by him. Based on the above mentioned information the behaviour of the client in conclusion of the purchase contract is of dual nature/capacity: as he purchased 10% of the vehicle value in behalf of himself and 90% based on intrusion purchase (SHIRAA AL-FODOLI), it is a disposition which depends on the decision and approval of the other party (in behalf of whom the purchase is executed). Hence the company is entitled to accept or reject the disposition and act of the client. In case of approving the client's disposition the Company will own 90% of the vehicle and has to pay its share in its price, thereby the partnership of the vehicle (which is Sharikat-Ul-Milk) takes place between the company and the client. Should the two parties agree to sell the vehicle then the profit, after each party returns its capital, shall be distributed between both of them on pro rata basis, also

loss shall be distributed between them on pro rata basis. However, each party is entitled to sell his share to the other party in Murabaha mode or in normal sale as well as entitled to lease his share to the other, a lease that ends into ownership. The selling of the share can be on the spot/at once or in partial basis (Diminishing Partnership). This principle is applicable within the narrowest range. It is not a general principle as it is based on the intent which is hidden and can not be confirmed.

Source:

Dallah Al-Barakah Group, Development and Research Department, "Book of Shari'ah Fatwas and Answers in Banking Applications", part (1), Fatwa No. (62).

Question (5):

A client approached Kuwait Finance House to purchase goods and sells them on credit basis while he has a previous contract with the seller. However, we know that he should waiver the previous contract, but how can be waiver be done unilaterally? Is the client obliged to inform the seller of this waiver?

Answer:

To deal with a promiser to purchase who had a previous contract with the exporter, we shall first see if this contract is a general agreement(a general agency), in the sense that it is a framework for dealing with specific limits, then it does not prevent promise and Murabaha transaction; However, if the contract covers a specific transaction with known quantity, price and delivery date as well as liable to be enforced direct on the goods then this contract should be cancelled by the two parties because any concluded contract can not be cancelled unless a new agreement has been entered into by the two parties a matter that abrogates the contracts, which is so-called rescission (Iqala), hence one party has to submit the cancellation/ termination document and the document of approval of such cancellation from the other party to avoid any manipulation and trickery. However, any expression which implies termination of the previous contract may be used, such as to say: "We have agreed to cancel the previous contract regarding …." Thereafter the new wording of the agreement is signed by both parties.

However, waiver by the promiser to the Kuwait Finance House has no effect unless it is connected with the presentation of the approval of the exporter, whereby it is considered as implied rescission (Iqala) of the previous contract and conclusion of the new one.

Source:

Kuwait Finance House, Book of "Shari'ah Fatwas on Economic Issues", part (1), and (2), Fatwa No. (107).

Question (6):

A client approached us to purchase specific goods … then before the Kuwait Finance House purchase these goods, the documents arrived indicating that the exporter had already shipped the goods and they arrived to Kuwait in the name of the Kuwait Finance House.

Hence is it permissible to complete the Murabaha transaction? Or what should be done in such case?

Answer:

The Committee opined that the Kuwait Finance House should not purchase these goods so as to avoid suspicion as the presented scenario show apparently that the Kuwait Finance House is just a mere financer.

Source:

Kuwait Finance House, Book of "Shari'ah Fatwas on economic Issues", part (1), and (2), Fatwa No. (137).

Question (7):

A person, who wants to deal with us through Murabaha transaction, had previously applied to get price offer, but the exporter had entered into a final contract with him regarding the deal that he needs to enter into Murabaha transaction with the Kuwait Finance House.

What is the Shari'ah opinion regarding this matter?

Answer:

It is indispensable to cancel that contract which is entered into between the exporter and this person and prove the cancellation, only then price offer is made, hence the contract is concluded between the Kuwait Finance House and the exporter whereby the role of that person is limited to demanding of prices and the promise to purchase.

Source:

Kuwait Finance House, Book of "Shari'ah Fatwas on Economic Issues", part (1), and (2), Fatwa No. (259).

Question (8):

A customer sometimes offers us price quotation of vehicle/goods from a supplier, while there is a prior agreement signed between the two parties (the client who purchases from us and the supplier) or the customer may have a receipt issued by the supplier showing that he paid a certain amount as an earnest money.

What is the Shari'ah reply of the Kuwait Finance House towards this customer? Should the Kuwait Finance House say to the client go to the supplier, accept the agreement and the contract, and then we promise you to purchase from the supplier and resell to you?

Answer:

If the client has already agreed with the supplier before his desire to deal with the Kuwait Finance House regarding the same commodity then it is not permissible to complete the transaction unless rescission (Iqala) is conducted in a correct manner between the customer and the supplier provided that Iqala should not put it as a condition for the Kuwait Finance House to purchase the goods from the supplier.

Source:

Kuwait Finance House, Book of "Shari'ah Fatwas on Economic Issues", part (1), and (2), Fatwa No. (347).

Question (9):

If the exporter sent the importer a price quotation based on a request by the latter and the exporter asked the importer to reply either by acceptance or rejection of his offer. Then the importer accepted the offer to pay the value of the goods in accordance with the offer of the credits. Hence what do we call the reply of the importer to accept the offer of the exporter? And does the sale transaction completed based on this acceptance or is it just a promise?

Answer:

If the client received a price quotation from the exporter which is valid for a specific period of time and the client replies by acceptance during this period then the quotation and the acceptance form a contract.

In such case the Kuwait Finance House is not allowed to engage in this transaction at all, but if the acceptance of the client is focused on some imported goods shown in the quotation and there is a condition, presumption or custom showing that the prices of the

offer is linked with contracting on all kinds/items then this acceptance, which is not in conformity with the quotation, is considered as an offer (as if a new offer by the client) so if it is accepted by the exporter then the contract is established, but if the exporter rejects partial acceptance and the amendment then the contract is not concluded. Hence, in view of this fact there is no objection for the Kuwait Finance House to enter into a Murabaha transaction with the client.

However enhancement of the exporter to his first quotation, accepted by the client (by putting his signature on the request of the client) is considered as an excess to contracting and has no effect because the contract is completed and entered into by virtue of the quotation submitted by the exporter and the acceptance of the client to the whole items of the offer.

Source:

Kuwait Finance House, Book of "Shari'ah Fatwas on economic Issues", part (1), and (2), Fatwa No. (452).

Question (10):

With reference to the answer of the board stated in its eighty fifth minutes regarding the abstention of engagement in any process/transaction that was previously agreed upon between the client and the exporter through the signing of the client on the acceptance of the quotation for a fixed term that was issued to him by the exporter. to resolve the consequences of the application of the fatwa regarding the missed opportunities for many concluded operations, and after deliberation on the subject matter and proposal to resort to rescission (Iqala) between the client and the exporter in a proved way which is free of any condition that binds the Kuwait Finance House to substitute him even if the client has the desire to conduct the process through him.

Answer:

A wording is requested which contains an expression of Iqala issued by the client and directed to the exporter to be sent to him at the opening of the credit. If the exporter accepted Iqala then the effect of the previous contract will be terminated and the

procedures of opening the new credit by the Kuwait Finance House and exporter will be preceded. However, if he refused the rescission (Iqala) request then there will be no credit and considered as not being opened and the opportunity remained available to take advantage of the contract signed between the client and the exporter.

Source:

Kuwait Finance House, Book of "Shari'ah Fatwas on economic Issues", part (1), and (2), Fatwa No. (454).

(16.2) the agreement of sending back, replacement and liquidation of goods

Question (1):

Is it permissible for the purchaser from the Kuwait Finance House through Murabaha Transaction to make an agreement with the principal seller of the goods (the exporter) to return the goods to him in the case they are not sold as a whole or part and replace them with another type or obtain their value while Kuwait Finance House knows that?

Answer:

There is no problem in terms of Shari'ah rules and principles for the principal seller of the goods (The exporter) to agree with the purchaser (through Murabaha transaction) from the Kuwait Finance House to send back the goods to the same exporter in the event of non-sale of all or part of the goods, replace it with another type of items or obtain its value in cash, even if the Kuwait Finance House knows about that.

As this is a new transaction between the purchaser, who entered into Murabaha transaction with the Kuwait Finance House, and the exporter, then it is a separate sale contract or barter based on a previous independent mutual promising. Nevertheless, this new contract and its consequences have no relation with the Kuwait Finance House.

Source:

Kuwait Finance House, Book of "Shari'ah Fatwas on economic Issues", part (1), and (2), Fatwa No. (53).

Question (2):

Is it permissible for the purchaser from the Kuwait Finance House through Murabaha Transaction to make an agreement with the principal seller of the goods (the exporter) to return the goods to him in the event of non-sale of all or part of it and replace it with another type or obtain its value in cash? Considering that the Kuwait Finance House knows that?

Answer:

The agreement between the principal seller and the purchaser (through Murabaha transaction) from the Kuwait Finance House to return the goods in the event of non-sale of all or part of it and replace it with another type or obtain its value in cash is inconsistent with the norms of Shari'ah rules in the absence of a contractual relationship between the exporter and the purchaser from the Kuwait Finance House. However, the one who bears the consequence of rejection and depression is the first purchaser (the Kuwait Finance House).

Source:

Kuwait Finance House, Book of "Shari'ah Fatwas on economic Issues", part (1), and (2), Fatwa No. (304).

(16.3) Agreement to sell the goods to the bank at a price less than their value and then the client pays the difference

Question:

A client (who is a purchase orderer) approached Kuwait Finance House to purchase a property under Murabaha transaction. Then based on a survey of property, it has been found that the current value of the property , which is the subject matter of the Murabaha, is not more than DK 45.000 while the seller set a value of DK 50.000 for the property. Yet, due to his desire to buy, the promising purchaser undertakes to pay a sum of 5000 Dinar provided that the seller sells the property to Kuwait Finance House according to the evaluation price, conditioned that the purchase orderer after registration of the property in his name, pays the difference between the evaluation price and the price set by the seller.

Is it permissible for the Kuwait Finance House to conduct this Murabaha albeit it knows the agreement made between the promising purchaser and the seller to the Kuwait Finance House?

Answer:

It is impermissible for the Kuwait Finance House to purchase this property from the owner at a price less than the value set forth by the latter if the Kuwait Finance House became aware of the prior agreement between the promising purchaser and the seller to settle down the difference between them, as this is considered as a pure and simple collusion to complete a mere financing between the owner and the promising purchaser, but if we knew latter after the conclusion of the sale contract with the promising purchaser that the latter had paid the difference to the owner before the completion of the transaction then we have nothing to do with that matter as we have already finalized the transaction without passing through the forbidden collusion.

However, if the transaction is completed and before the conclusion of the contract with the seller, we got to know about this agreement with the seller, then the Kuwait Finance House has the option either to sell to the promisor or not. Yet if he chooses to sell, then the promisor has to write a note stating that he has undertaking towards the owner regarding the completion of the transaction and

that the owner is not entitled to any amount of money against him in connection with this transaction, provided that the owner has to put his signature on the copies of this acknowledgement (each party receives a copy and the third to be kept with the Kuwait Finance House), but if we came to know that the promising purchaser had paid an earnest money to the seller who made use of it and changed his mind regarding the transaction, then we should not effect this transaction until the previous relationship between them terminates as well as we are not responsible to return the earnest money and we do not undertake to pay it to him as it is a separate relation between him and the seller.

Source:

Kuwait Finance House, Book of "Shari'ah Fatwas on economic Issues", part (1), and (2), Fatwa No. (325).

(16.4) Collusion to return the amount to the client minus a specific commission

Question:

Murabaha transaction in the commercial sector is conducted through the following steps: it commences by the client goes to any local showroom in Kuwait and chooses the required commodity such as furniture, electrical devices or any other type of items and obtains the price offer that should be addressed by the exporter to the Kuwait Finance House. Thence after the Kuwait Finance House accepts to execute the transaction with the client; it purchases the goods in cash from the exporter based on inspection conducted by one of our representatives and thereafter resells it to the client in installments. However It was noted, and made sure that some clients agree with those showrooms to obtain cash money in lieu of goods in which case the client requests the showroom to send a fictitious offer to the Kuwait Finance House without any intention to get any goods or even part of it. They agree that after Kuwait Finance House purchases the goods, pay its price in cash to the showroom and resells it to the client, the

showroom delivers the whole cash amount to the client minus a commission/wage against this service. Hence please provide us with the Shari'ah opinion regarding this transaction if we discovered this type of dealing after the completion of the transaction. What is the Shariah opinion in case we came to know this dealing after the completion of the transaction i.e. after the conclusion of the sale contract with the client?

Answer:

After the board was briefed on the administrative controls (in four pages attached to the original copy of the minutes), which contains the practical means to detect cases of manipulation through conducting simulated sales, the board was of the view that the controls are good and varied, so the board replied: it is essential to make sure that the goods is received by the Kuwait Finance House from the trader, even if without transferring it, and make sure it is delivered to the client as precaution against the possibility of non-existence of the goods themselves.

Also resort shall be made to the method of "sale conditioned with option" for the Kuwait Finance House to avoid cases of clients' backing out of their promise to purchase from the Kuwait Finance House.

The board also recommended refraining from purchasing from individuals/companies involved in such collusion and conspiracy cases and refusing to deal with them for six (6) months until they correct their conduct.

Source:

Kuwait Finance House, Book of "Shari'ah Fatwas on economic Issues", part (1), and (2), Fatwa No. (350).

(16.5) Earnest money paid by the client to the exporter

Question:

How can Kuwait Finance House be involved in a Murabaha transaction whereby the client has already paid an earnest money to the exporter?

Answer:

If a promising purchaser has paid an earnest money before his desire to deal with the Kuwait Finance House then it is impermissible for the Kuwait Finance House to be involved in such a transaction unless such earnest money is recovered and the contract between the client and the exporter (if any) is terminated. This may be made by providing Kuwait Finance House with the letter of termination of this agreement including the recovery of the earnest money authenticated by witnesses.

This is in case of new dealers with Kuwait Finance House, but for old dealers who repeated this conduct, Kuwait Finance House shall not deal with them unless a period elapses during which they

reflect obligation towards methods and standards of Kuwait Finance House.

Source:

Kuwait Finance House, Book of "Shari'ah Fatwas on Economic Issues", part (1), and (2), Fatwa No. (95).

(16.6) Shipping of the goods on behalf of the client

Question:

Kuwait Finance House ordered goods in its name from an exporter.

The exporter has shipped the goods in the name of the client (Promising Buyer) and not in the name of the Kuwait Finance House. What action can be done? Do we accept the process or not?

Answer:

It is not permissible as the goods must be in the name of the Kuwait Finance House, otherwise the whole process will become a mere financing and this is wrong.

The error shall be corrected by terminating all contracts issued or actions taken between the client and the exporter.

Then a new transaction shall be effected between the exporter and the Kuwait Finance House with precautions not to deal that way in the future.

Source:

Kuwait Finance House, Book of "Shari'ah Fatwas on Economic Issues", part (1), and (2), Fatwa No. (69).

(16.7) the existence of a relationship between the client and the first seller of the goods

Question:

A woman offered us to buy a house. Then somebody promised to purchase it in Murabaha transaction at a particular price. Later on we found that this person is the woman's husband who leases this house from his wife, and he does not pay her the rent. What is the action to be taken?

Answer:

It is permissible in such case to purchase the house (which is promised to be resold to the husband) as each of them is an independent person, but the value of the property should be investigated and see if it is suitable then the house shall be purchased by the Kuwait Finance House and resold to the husband for fear of collusion between the couple to purchase the house at a high price and the husband backs out of his promise thereafter.

Source:

Kuwait Finance House, Book of "Shari'ah Fatwas on Economic Issues", part (1), and (2), Fatwa No. (95).

(16.8) Using the client license to import goods from the exporter

Question:

Is it permissible for the Kuwait Finance House to use the commercial license of the Client (who authorized the use of its license) to purchase printing machines from the exporter and promised to purchase such machines from us after we possess them?

Answer:

There is no Shari'ah objection regarding this matter, provided that there should be no condition for the Kuwait Finance House to sell same to the person who authorized the use of its license, but Kuwait Finance House should have the option of selling it to him or to others.

Source:

Kuwait Finance House, Book of "Shari'ah Fatwas on Economic Issues", part (1), and (2), Fatwa No. (81).

(17)

Modes of Participation

In Murabaha Contracts

(17.1) Modes of participation between banks in the Murabaha contracts

Question:

Please provide the Shariah opinion regarding the permissibility of participation with other Islamic banks in Murabaha transactions?

Answer:

There are numerous types that can be applied for participation with Islamic banks in the transactions conducted by the bank:

First: **The First Mode:** The bank enters into agreement with the Islamic banks (Mudharabah or Musharakah agreement) according to allocated percentage of profits against its efforts and confined to its share profit in financing. Then the bank carries out its transactions based on this mode of agreement which is clearly Shari'ah compliant.

Second: **The Second Mode:** The bank enters into a general frame agreement to set forth the provisions of dealing with the clients, and then agrees with the Islamic bank on the

partnership, based on which it enters into Murabaha transaction. This mode is also Shari'ah compliant because other banks participate before the emergence of indebtedness with the client. The participation of Islamic banks can be made in the form of setting standing instructions of contribution with a specific amount of money in each transaction conducted with the client.

Third: **The Third Mode:** The bank purchases the commodity to be sold, then before the selling enables other banks to participate as partners (which is a kind of partial undertaking or partnership) and carries out the selling by itself as an agent for them. This mode is also Shari'ah compliant.

Fourth: **The Fourth Mode:** The bank conducts the Murabaha transaction then asks other banks to participate. This mode is non-Shari'ah compliant and forbidden as it represents "Debt Sale" that ensued due to the execution of Murabaha transaction with the client.

Source:

Dallah Al-Barakah Group, Development and Research Department, " Book of Shari'ah Fatwas and Answers in Banking Applications", part (1), Fatwa No. (30).

(18)

Murabaha in Services

(18.1) Services of Charities

Question:

The Committee of African Muslims or other charitable committees in the country offer charitable projects and endow them as Waqf to Muslims applicants; such as digging of wells in Africa, construction of mosques or printing and distribution of books and Quran free of charge as well as many other services.

Is it permissible for Kuwait Finance House to purchase some of these services and sells them to the citizens who want to purchase in Murabaha mode to achieve profits for both Kuwait Finance House and the client who wants to offer charitable works in comfortable installments.

We consulted one of the members of the Committee of African Muslims who expressed his admiration for the idea?

Answer:

What can be owned can be sold and bought – such as an asset (Ayn) which is owned by specific person(s), for example digging

of wells in arid land … etc; yet what may not be owned may not be sold or bought such as mosques or endowment lands or wells … etc., which may not be sold or bought.

Therefore these projects are not allowed to be sold in Murabaha or bargaining transactions as they are considered as endowments.

Source:

Kuwait Finance House, Book of "Religious Opinions on economic Matters", part (1), and (2), Fatwa No. (331).

(18.2) Labor Services

Question (1):

A client requested us to provide him with different types of building materials (in Murabaha sale) and at the same time asked us to pay in cash the wages of the construction contractor until the completion of the construction project.

Is it permissible to pay in cash the wages of that contractor and consider it as (Murabaha sale) in addition to the Murabaha sale of building materials?

Answer:

The Committee sees that the first part of the question, regarding the sale of building materials in Murabaha, is permissible, whereas the second part of the question, regarding the payment of wages of building contractor in cash to be added to the Murabaha sale of the building materials, is Shariah impermissible because wages thus have become a debt and debt could be paid only in its kind otherwise it changes into usury.

Source:

Kuwait Finance House, Book of "Religious Opinions on economic issues", part (1), and (2), Fatwa No. (117).

Question (2):

It is well known that the components of agricultural projects involve fixed assets and other inputs (including fertilizers, seeds, animals and employees) … etc. The bank may finance some elements of the project in Murabaha through purchasing and selling them to the project owner. This would apply without restriction to some components and inputs. If it happened that the bank agreed to finance the whole inputs in Murabaha mode we face the problem of employees as it is difficult to possess and sells them in Murabaha to the project owner. This applies to other services, such as hiring of tractors and other necessary inputs.

This may be a barrier that prevents the implementation of the project, in which the owner possesses only the fixed assets. It comes to mind that ownership can be possessed constructively in the sense to let the project owner contract with a group of workers

to perform specific tasks such as installation of barbed wires, for example, and then submit the bill for settlement. Let us put the question in another way: If Murabaha means possession of goods and selling them to the purchase orderer; is it permissible to possess services constructively and then sell them to the purchase orderer?

Answer:

Murabaha in the cost of labor is not possible, yet if the bank wants to finance all the operations of the project, it may enter through Muzara (sharecropping), Mudharabah or Musharakah modes. The first requires the existence of qualified personnel at the bank to supervise the project which might be extremely expensive, while Mudharaba is banned outright by the orders of the Bank of Sudan. There remains only the mode of partnership (Musharaka) which is operated as follows: the bank enters into partnership where capital is shared between the bank and the client in in an agreed ratio, for example 20% - 80%.Then out of the money of the existing partnership the rental of the land including all requirements of the project can be paid as well as the bank undertakes to pay, out of the

account of the partnership, the whole costs of the agricultural process such as plough, fertilizers and gasoline as well as labor wages. If the client assumes the supervision of the project then it is entitled for an agreed upon percentage besides the net profits that have to be divided on pro rata basis. However it is permissible for a partner to give the other preference in the distribution of profit, but in the case of loss it would be charged on pro rata basis. Should the costs of agricultural operations exceed the capital of the partnership then the bank is entitled to ask the client to pay his percentage of share in the excess amount.

Hence, the bank is not allowed to finance the cost of labor through Murabaha transaction as well as the purchase orderer is not allowed to have constructive or actual possession of it as they are mere services and not a commodity offered for purchase.

Source:

Shari'ah Board Fatwas, Islamic Bank of Western Sudan, Fatwah No. (18).

(18.3) Installation Service

Question (1):

We buy central air conditioning units from a seller. The seller commits himself to bear the cost of installation service within the building. The value is paid to the seller in partial installments. Whenever he installs or finalizes a portion of the work, we pay him an amount equivalent to the finalized service. It should be noticed that the building where the equipment are installed is not a property of Kuwait Finance House; instead it is the property of another party. This other party buys from Kuwait Finance House the equipment on a profit margin and the equipment value is not registered on the buyer’s account irrespective of the sale being in cash or credit until the equipment are installed in the building. Thus, Kuwait Finance House is the buyer whereas the exporter is the seller bound by a contract. Similarly, there is another totally independent contract between Kuwait Finance House and the building owner (buyer).

What is Shariah acceptable method to complete this transaction?

Answer:

Kuwait Finance House has been approached by the building owner with whom a promise is made to sell the equipment on Murabaha on condition of installation. It buys the air conditioning units from the exporter on mutually agreed terms on condition of installation, and it desires and agrees with the exporter on the payment method depending on the agreed installation stages. Kuwait Finance House installs the equipment in execution of the promise and the installed equipment is considered a trust lodged with the building owner. Later, a contract is signed between Kuwait Finance House and the building owner pursuant to the promise and in accordance with the agreed upon maturity scheduled for payament of price.

Source:

Kuwait Finance House, Book of Fatwas on economic issues, Part (1), and (2), Fatwa No.(86).

Question (2):

A client requested us to provide some machines under Murabaha transaction, some portion of the total price of these machines are installation expenses and it is known that the expenses of installation are services and not tangible. Hence is it allowable to include in the price of Murabaha the expenses of installation, or should they be deducted from the value of the machine?

Answer:

There is a general rule in the sale of Murabaha that must be understood and applied i.e. the sale of Murabaha is the sale of trust. Therefore, the buyer in Murabaha says to the seller: " I purchase these goods and give you a profit of (…)". This profit may be calculated out of "the purchase price plus other costs". Any way the essence is the purchase of the goods themselves regardless of other services and expenses. However, the seller may ask a profit calculation based on the purchase price plus other expenses, but if he said: "I sell you the goods and the profit should be based on purchase price only", then it is inadmissible to add any other

expenses to the purchase price. If the goods which are the subject matter of Murabaha require installation service and we accepted the condition of the client, then we import the goods and install them in the specified site in accordance with the request of the client and in this case it is permissible to add all costs to the price. Hence sale to the client is based on Murabaha i.e. based on the price of the goods plus the cost, but we must state frankly that the cost of the goods plus the installation will be so and so (…).

Source:

Kuwait Finance House, Book of Fatwas on economic issues, Part (1), and (2), Fatwa No.(118).

Question (3):

Is it Shariah permissible for Kuwait Finance House to sell equipment to a company besides the installation; provided that the installation costs are calculated within the sale price?

Answer:

The board is of the view that this work is, Shariah permissible, but if the sale is in Murabaha mode then it is not permitted to mention in the contract that this is the price, but rather to be mentioned that it costs the seller so and so.

Source:

Kuwait Finance House, Book of Fatwas on economic issues, Part (1), and (2), Fatwa No.(124).

Question (4):

A customer desires to buy some machines from Kuwait Finance House provided the payment to the exporter is as follows:

50% upon delivery, 40% after 60 days of delivery pursuant to a letter issued by him confirming the receipt and installation and 10% after the installation and commissioning of the machines and ensuring their workability, as it is clear that the credit value includes the price of the goods, plus the cost of installation and operation without identifying each separately, what is the responsibility of Kuwait Finance House towards the installation

and commissioning? To whom the buyer reverts? to the Kuwait Finance House, or to the vendor? And in case of any disparity or difference if returned to Kuwait Finance House, what is the extent of knowhow required from the Credits Section in this field of work in order to be able to settle things between the buyer and the first seller? What we sell to the promising buyer? goods, or goods plus work? And how we sell unfinished work as we conclude the contract with the promising buyer containing the whole value of the credit including the goods, work and installation?

Answer:

This process includes a promise to purchase and a contract between Kuwait Finance House and the exporter to sell the machines on condition of installation and commissioning and then a contract with the promising buyer also to sell the machines and install them. The responsibilities and commitments are assigned between the parties of the contracts as the exporter is responsible towards Kuwait Finance House for the delivery of machines and installation whereas Kuwait Finance House is responsible towards the buyer. Further the agreed upon schedule of payment in each contract is binding to the contract parties. Kuwait Finance House in

determining its responsibilities can make use of any experts. However, the sold materials are the goods with the condition of installation which is a well accepted condition in such contracts which is specified in the price.

Source:

Kuwait Finance House, Book of Fatwas on economic issues, Part (1), and (2), Fatwa No.(432).

Question (5):

We have executed a Murabaha transaction with one of our clients, which included an assignment of fitting aluminum as per provisions of a contract signed between us and a contractor. While the contractor was in the process of executing the work, there appeared some additional works which was not stipulated in the contract. The client with whom we are dealing, instructed the contractor to execute the additional work and that he would inform Kuwait Finance House accordingly. These additions were implemented in accordance with the previous specifications and conditions. There would be a variance of price between the

previous work and the new additions. The client has informed us of such additions after work completion.

With the foregoing in mind, may Kuwait Finance House pay value of the additions to the contractor and sells them to the client taking into consideration that we have already completed our contract with the client and closed his records.

Answer:

If the provisions of the construction contract concluded between Kuwait Finance House and the contractor stipulate that if there are issues whose completion is of interest then the price shall be determined as in the contract price, and Kuwait Finance House has to pay the value of the new works to the contractor. This additional payment shall be referred to the client. However if, the contract does not include such a provision while at the same time the common interest necessitates its execution, the matter would have to be governed by customary practices. The client shall be demanded to settle the additional amounts as per the agreed profit

in accordance with the contract signed between Kuwait Finance House and the client.

Source:

Kuwait Finance House, Book of Fatwas on economic issues, part (1), and (2), Fatwa No. (434).

(18.4) Calculation of Profits on Insurance service

Question:

How far is it permissible for the bank to calculate its profits on insurance paid by it to non-Islamic insurance company?

Insurance of vehicles purchased from the bank is conducted to cover the period of deferred installments in behalf of Dubai Islamic Bank, and this is done in two ways:

First: the bank either pays the value of insurance, and in this case includes it within the total value of the Murabaha and then calculates its profits. Occasionally, the bank pays the insurance value to non-Islamic company, includes it in the value of the transaction and then out of which calculates its profits. Is it permissible for the bank to pay the insurance value to non-Islamic insurance company and enter it into the transaction value?

Second: or the client pays in cash the value of the insurance or otherwise the insurance is conducted through him. In such

case, the value of insurance will not be considered in calculation of the profits of the bank, occasionally, the bank pays the insurance value to non-Islamic company, include it in the value of the transaction and then out of which calculate its profits. Is it admissible for the bank to pay the insurance value to clients who are dealing with non-Islamic insurance company and enter it into the transaction value?

Answer:

The Bank is not permitted to pay the value of insurance for clients dealing with non-Islamic insurance companies as long as there is an Islamic insurance company, as this encourage dealing with non-Islamic insurance companies, besides the bank is considered as a contractor with such companies as far as it has paid them the value of insurance and obtained the profits.

Source:

Opinions of the Shari'ah Board of Dubai Islamic Bank, Fatwa No. (72).

(18.5) Profit on the Service Associated with the Commodity

Question:

Is it permissible for the bank to buy a taxi, with a plate number and sells it, considering that the plate number itself has a value that is independent of the car price, meaning that the price of the vehicle purchased by the bank without plate number is different from the price of the vehicle with a plate number?

Answer:

Purchase of a taxi with a plate number that increases its price compared to the one without a plate number in a Murabaha sale is permissible and does not contain any violation of the provisions of Shari'ah rules.

Source:

Opinions of the Shari'ah Board of Dubai Islamic Bank, Fatwa No. (61).

(19)

Repetitive Murabaha within a Specific Ceiling

(19.1) Repetitive Murabaha within a specific ceiling

Question (1):

What is the Figh view on what is known as Repetitive Murabaha within a specific Ceiling, which gives the client a power of attorney to purchase on behalf of the Bank and sell to himself at an agreed upon fixed profit and a specific ceiling?

Answer:

This mode of Murabaha is special mode which is mostly applied to customers of small scale business and retailers who need to purchase miscellaneous and repetitive materials which make it difficult to revert to the bank for each operation to make a separate contract.

The reference of permissibility of such mode of Murabaha is the permissibility of authorization of the client (as agent) by the Bank to purchase on behalf of it, and based on this agency, the client sells to himself at a previously agreed upon fixed profit and ceiling (this is the majority opinion).

Source:

Kuwait Finance House, Book of "Shari'ah Fatwas on Economic Issues", parts (1), and (2), Fatwa No. (8).

Question (2):

Please advice Shari'ah opinion about the attached Form "Appendix of Sale Contract for the Purchase orderer", particularly with respect to the following:

Is it permissible, according to Shari'ah, to set a period of time for the contract of sale of Murabaha made with the Purchase orderer (the client) whereby the latter is limited by specific ceiling (appropriations) and through this ceiling (appropriations) he can concludes several transactions with the bank against sufficient guarantees, the proposed amendments are:

First: Article No. (): "The duration of this contract can be renewed with the approval of the First Party."

Second: Article No. (): "The First Party has the right to amend all applicable dealing provisions (Murabaha ratios,

commissions, currency difference, mailing fees…etc.), without recourse to the Third Party and / or the Second Party, It only notifies the Second and / or Third Parties of any modifications to those provisions?

Answer:

As for the clarification on the amendments taken by the Board of Directors to the terms of a Murabaha contract, regarding identification of time for a Murabaha contract, what appears to me that this contract is a partnership on a trading matter in accordance with an agreement between the two parties. However, Jurists have different points of view regarding the permissibility of determining a specific time for the contract of partnership or Mudaraba, for example five years. Some of them permit it while others forbid it. The permissibility of timing of partnership has been confirmed in Fatwas of Al-Khaniyah. Also in Hanablah Glossary Mudaraba timing is permissible according to some opinions although it has been forbidden by others.

The Jordanian civil law took the views of jurists who permitted timing of both partnerships and Mudaraba; as stated in articles (601) and (631).

In view of the above mentioned facts I here by support the opinion that timing of Murabaha contract is permissible based on the approval of the two parties, if it is essential for the interest of the Bank.

Source:

The Islamic Bank of Jordan for Finance and Investment, Book of "Shari'ah Fatwas", parts (1), and (2), Fatwa (Opinions) No. (9).

(20)

The Margin of Murabaha

(20.1) Method for determining the margin

Question (1):

Kindly requested to indicate Figh opinion on the matter described below in the light of what is required in the scope of Murabaha transactions conducted by the Bank in accordance with the provisions of its Act No.(13) for the year 1978 regarding the possibility to apply the measure of direct proportionality in calculation of profits depending on the length of the repayment period offered to the purchase orderer?

The explanation of the question:

Types of goods and commodities that traders are dealing with, differ in regard to the speed of the disposal and method of payment of the price. Of these goods some are sold in cash or within a period not exceeding weeks whereas other are sold on credit for periods of two to six months, however, some of them need periods of at least one year up to two years.

The Islamic Bank at the beginning of the practical application of Murabaha followed the rule of fixed percentage for Murabaha transactions that range between 2.5% - 5% and allowing a period for payment of the value ranging between six months for merchandises and a year for equipment and vehicles.

However, the practice showed that this time limit can not cover various requirements in view of the fact that there are some types of goods which are ready for disposal within a period not exceeding two months and at the same time there are other types of goods which are non-saleable unless being distributed with in a period of up to two years.

In the light of this need the management of the Bank sees that there is a necessity to expand the scope of Murabaha on the basis of reduction of the rate for short-term transactions and increase of the rate for long-term transactions.

It is well known that the profits calculated by traders for sold goods increase and decrease depending on the speed of disposal of the goods themselves. For instance the dealer of foodstuffs satisfies

with a modest profit within 4%, while the equipment dealer will not content itself with a profit less than 30% because of the different nature of the discharge of goods and speed of turnover in the market?

Answer:

Having taken cognizance of the well recognized Shariah references, and based on the study of the topic of the inquiry the following is considered:

First: The profit should be known for both the seller and the buyer in order to have a valid Murabaha transaction.

Second: It is not a condition in Murabaha to collect the price on the spot; and if it is not received instantly hence it is subject to the rules of credit sale.

Third: The scholars said that if the seller said to the buyer: " I have sold you these goods at a price of ten on the spot and fifteen on credit" provided that the option will be for the buyer, then the sale is valid.

Fourth: The scholars noted in the Murabaha provisions that the profit is considered based on the capital while in the case of sale on credit the price is based on the sold material and as well on the term.

Therefore, since the Board of Directors of the Islamic Bank is authorized for the management of the Bank and has the right of discretion as set out in its Act and compliant with the Shari'ah rules besides what is required by the most likely interest, then what appears to me that, according to Shari'ah, there is no objection regarding the application of the measure of direct proportionality in calculation of profits, depending on the length of the repayment period given to the purchase orderer as well as on the type of goods and the possibility of sale or reimbursement provided that the buyer has to know how much profit is required.

Source:

The Islamic Bank of Jordan for Finance and Investment, Book of "Shari'ah Fatwas", Parts (1), and (2), Fatwa No. (5).

Question (2):

What is the Shariah opinion regarding the basis on which the margin of Murabaha is calculated?

As stated in page (19) of banking tariff, which indicates that banks have to apply the margin of Murabaha against the actual contribution of the Bank in financing, after deduction of the value of the down payment margin of seriousness paid by the customer?

Answer:

Sale in Murabaha contracts is effected after the Bank purchases and owns the goods, then offer same to the purchase orderer at agreed upon profit provided that the latter has to pay part of the value of the goods that equal to a specific percentage of the price, as down payment, and the remaining value paid in installments. This down payment is part of the price of the goods and not part of the amount paid by the bank and so it is not called the margin of Murabaha. Also it may be permissible to stipulate for him the price of the whole goods and also profit is entitled.

Based on the tariff of the Bank of Sudan, the Bank is not entitled to profit in this case although it deserves the profit according to Shari'ah (cf. the book of Al-Samerkandi, p. 159-160).

Source:

Shari'ah Board, "Shari'ah Fatwas ", Islamic Bank of Western Sudan, Fatwah No. (24).

(20.2) To determine the percentage of profit in the purchase

Question:

Please provide Shari'ah opinion regarding setting long term Murabaha transactions with variable profit margins?

Answer:

The determination of profit margins in Murabaha transactions either to be set within a contract framework (that organizes the future dealing with the customer or within the Murabaha transaction) that is carried out under such framework:

First: If the profit margin has been specified under the provisions of the contract framework to be in specific percentage (…%) for specific period (…) then this specification is only a hypothetical estimate that reflects the desire of the bank and the customer; and could only be achieved through transactions, hence, according to Shari'ah, there is no objection to change this profit margin in the future and for a new period, and even it could be changed for the existing

period provided that the Bank has reserved the right to change it as soon as it informs the customer.

Second: However, in the case of execution of a Murabaha transaction as per the framework, then , according to Shari'ah, there is no room to increase or decrease its profit margin to be connected with the increase or decrease of its term. Yet the percentage can be discounted without linking it to time. Moreover, it is permissible to extend the credit term without increasing the percentage. Nevertheless, the basic principle is to execute the transaction as it is, in accordance with the agreement. In the event the Murabaha margin is changed then it is not a condition to liquidate the previous Murabaha and settle its due amounts and reopen the new facility margin as it is possible to enter into a new debt while keeping the debt of the earlier transaction pending, or its maturity is confirmed, but it should remain as a trust with the debtor, in order to be carried out as a balance to the new transaction.

Source:

Dallah Al-Barakah Group, Development and Research Department, " Book of Shari'ah Fatwas and Answers in Banking Applications", part (1), Fatwa No. (8).

(21)

Subrogation of a Client by Another

(21.1) Subrogation of the client by the bank before the settlement of the debt

Question:

The bank undertakes, on behalf of some clients, to invest their money in international Murabaha transactions based on an agency contract that is dedicated for this purpose. At the end of the investment the bank gives the client his money and its profits earned during this period whereas the bank receives its agreed upon commission against this work.

It happens sometimes that the client requires its money or any part thereof after the bank has excuted of the deal of the Murabaha and prior to settlement of his debt resulting from the purchase of the goods on credit. It is permissible for the bank to subrogate its client in the investment and gives the client his money and the profits of the period that had elapsed from the date of investment and then the Bank receives the profits of the remainder period during which its money had subrogated the money of the client?

Answer:

Subrogation of the bank in place of its client in an international Murabaha transaction or in part of it, after the bank had carried out the deal of the Murabaha and prior to the settlement of the client of his debt resulting from the purchase of the goods on credit, is not Shariah permissible, because the investment have already been effected based on carrying out the transaction and there remains only the debt which is receivable from the debtor of the Murabaha. This debt is the right of the creditor who is the client. Then, for the creditor to get his capital or part thereof from the Bank before maturity date against an excess amount which is the profit of the transaction or part of it, is considered as spot sale for a credit sale, of its kind, to another party who is not the debtor with an increased amount versus period of time, a case which is considered as a state of usury. Yet it is permissible if the deal was done before the undertaking of the transaction and the Bank was the owner of the money (Rabul Mal) or partner with him, but after the completion of the deal then it is impermissible to make a subrogation in debt unless by just transferring of its right without any increase.

Source:

Fatwas of shari'ah Board of Dubai Islamic Bank, Fatwa No. (66).

(22)

Cessation of Payment

(22.1) Sale of the commodity subject matter of the contract

Question:

How far is it permissible to obtain an acknowledgement issued by the customer to sell the vehicle which has been purchased by him, in Murabaha transaction, from the Bank, in the event of cessation of paying for three installments?

Article (5) of the sale contract entered between the Bank and the buyer stipulated the following:

"The Second Party" "the purchaser" undertakes to pay the rest of the sale price, according to installments and dates specified in this contract and that, if he defaulted to pay three consecutive or sporadic installments, then the First Party (the Bank) is entitled to take the following measures:

First: Execute a precautionary attachment on the vehicle and the Second Party commits to deliver it to the First Party along with its title document as soon as there is a cessation of payment.

Second: to obtain a verdict to sell the vehicle to meet the entire rights of the First Party of the price and return the rest or in the event of non-fulfillment of the selling price of the whole dues to claim the balance from the Second Party.

The Bank is facing difficulties in the disposal of vehicles of customers who default in payments due to the length of the proceedings. Accordingly is it permissible for the Bank to receive an acknowledgement from the customer to be attached to the contract that allows the Bank to sell the vehicle and deduct its dues if he or she failed to pay three installments as stipulated in the contract?

Answer:

The acknowledgement stated in the question, as reflected in its text, is considered as power of attorney to the Bank to dispose of the vehicle although the Bank is the seller. In such case the acknowledgement would be incompatible with the requirement of the contract of sale which is the transfer of ownership. Hence the process is Shari'ah impermissible. Accordingly "the Board finds

that the Bank guarantees applied in selling vehicles in Murabaha are sufficient to preserve its rights".

Source:

Fatwas of shari'ah Board of Dubai Islamic Bank, Fatwa No. (71).

(22.2) Profits from the sale of commodity under the contract

Question:

Which party is entitled for the profit of a sold vehicle when its owner ceased paying its value?

A customer, who had bought a vehicle, in Murabaha transaction, from the Bank, paid part of its price and then failed to repay the rest, and so had stopped payment. Pursuant to the contract between the bank and the vehicle purchaser, the Bank received the vehicle, which was estimated to have a cash price of 10,000 Dirhams, and then re-sold it on credit at a value of ten thousand and nine hundred and fifty Dirhams.

Will the profits obtained by the Bank as a result of the re-sale of the vehicle on credit to the others be considered as his right or belong to the debtor customer?

Answer:

Since the buyer has paid a portion of the price and then failed to pay the remaining installments and the Bank confirmed the

continuing inability of the client to repay, therefore, the Bank has the right to recover the vehicle, based on the contract between it and the buyer. Hence the Bank has to estimate the cash price of the vehicle by trustworthy experts to be deducted from the debt due to the first purchaser.

The Bank has the right, if so desired, to sell the vehicle to others in Murabaha transaction and the profit resulting from this sale is a pure property of the Bank.

Source:

Fatwas of shari'ah Board of Dubai Islamic Bank, Fatwa No. (2).

(23)

Cancellation of Murabaha

(23.1) Bearing of the expenses incurred before the cancellation

Question:

Please provide the answer regarding who will bear the expenses of a cancelled documentary credit of Murabaha transaction if it has been cancelled by the purchase orderer or in case the purchase promise has not been executed for reasons related with the exporter?

Answer:

The Board is of the view that should the execution of the purchase promise failed due to any reasons related with the purchase promiser then he has to bear the expenses and the costs of the actual damages incurred thereof.

Source:

Fatwas of shari'ah Board of Qatar Islamic Bank, Fatwa No. (53).

(23.2) Eligibility of the bank in part of the profit in the event of the cancellation of the Murabaha transaction

Question:

What is the extent of the eligibility of the Bank to obtain part of the profit in case of returning of the sold material to the Bank and the cancellation of the Murabaha?

One of the dealers with the Bank contracted to purchase a vehicle and after using it for a period of up to three and a half months discovered some hidden defects, based on which the vehicle had been replaced by another vehicle from the supplier under the knowledge of the Bank and after using it for another three and a half months discovered other hidden defects and then returned same to the supplier under the knowledge of the Bank whereas the returned vehicle was accepted by the supplier, and so the full value of the vehicle had been refunded to the Bank and the transaction of the Murabaha has been cancelled.

Is the client entitled to recover the full amount of the profits of the transaction or do the Bank deserve to deduct a portion of it and

return the rest to the client? as well as to what extent is the bank eligible to a portion of the profits in the case of the rejection of the sold goods due to hidden defects?

Answer:

The Board has studied the issue of purchasing a vehicle by a client from the Bank in Murabaha transaction then using it for a specific period of time to discover some hidden defects and returned it through the Bank to the Agency whereby the Agency paid the full value of the price to the Bank: “Is the client eligible to recover the full profits of the transaction or the Bank is entitled to deduct a portion of the profit and return the rest to the client?".

The Board sees that the customer who bought the vehicle from the Bank in a Murabaha transaction had benefited by using the vehicle during the mentioned period of time while the Bank paid its full price to the First Seller whereas the customer paid only the installments against the period during which the vehicle had been in his possession in addition to the fact that procedures of purchase,

sale and issuance of the necessary contracts had been carried out by the Bank besides the expenses resulted thereof.

As it is Shari'ah permissible " to compensate the seller for the benefit obtained by the buyer in the event of the rejection of defected sold material compared to the situation of "Altasseryah" and pursuant to the Prophet saying: "Whoever buys a sheep to milk it and found that it could not be milked for a long period (Musrah) he has three alternatives: either to keep it, return it or return it to the owner along with one Sa’ (measure) of dates."

Therefore, the Board, according to Shari'ah opinion, sees no objection for the Bank to obtain a portion of the profits of the Murabaha and the rest returned to the client provided that this portion should be fairly estimated in accordance with the work and expenses incurred by the Bank.

Source:

Fatwas of shari'ah Board of Dubai Islamic Bank, Fatwa No. (36).

(23.3) Cancellation in order to enter into executed transactions

Question:

Please provide Shari'ah opinion about a client seeking Murabaha financing for purchasing an already sold villa?

Answer:

According to the client's request, this process has been entered into by the customer with the seller of the villa who paid an advance payment and completed the purchase for himself and in his name. Hence, in such case the process can not be conducted on Murabaha basis, because the purchase has already happened in favour of the customer and any intervening will be just financing against consideration and not against a commodity purchased by the company and sold through Murabaha transaction. However, the correct procedure would have been to authorize the client to purchase the commodity on behalf of the company before purchasing it to himself in order to enable the company to resell it to him on credit basis.

Consequently, there is no way to finance this transaction in compliance with Shari'ah unless the contract between the client and the seller of the villa is nullified and the advance payment is returned or waived pr either convincing the seller to return it to the client based on a promise to provide an alternative buyer then the company should purchase the villa before the conclusion of Murabaha sale contract with the client. Yet, the seriousness of nullification of the contract should be confirmed and should not be connected with the purchase of the villa by Al-Barakah Company.

Source:

Dallah Al-Barakah Group, Development and Research Department, "Book of Shari'ah Fatwas and Answers in Banking Applications", part (1), Fatwa No. (12).

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